# United States Court of Appeals for the Second Circuit



**APPENDIX** 

74-2030

APPEAL NO. 74-2030

ROBERT RIVERS

UNITED STATES COURT OF APPEAL SECOND CIRCUIT: NEW YORK

IN THE MATTER OF THE APPLICATION OF:
WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS, ROBERT
CURRY, MRS. EVELYN BROWN, THOMAS HOLMES, MRS. EPPIE
JOHNSON, WILLIAM HARRIS, MRS. ALBERTHA JOHNSON,
MRS. ROSE WILLIS, MRS. SHARA BROWN, WILLIAM DORY,
MRS. ELLA HARRIS, GEORGE ROSTKY and GREAT NECK MANOR
CIVIC ASSOCIATION, and all other similarly situated

Petitioners.

#### -against-

ROBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., GEORGE C. SOOS, FELIX G. ANDREWS, JOHN F. McDONALD, ARTHUR G. BINGHAM, WILLIAM H. RYAN, JR., TOWN OF NORTH HEMPSTEAD,

First Respondents,

HECTOR H. GAYLE, Executive Director, BERNARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK, LOCAL URBAN RENEWAL PLANNERS,

Second Respondents,

JOHN MAYLOTT and GERALD V. CRUISE, DEPT. OF HOUSING AND URBAN DEVELOPMENT,

Third Respondents,

#### APPENDIX

TO: RICHARD J. OSTERNDORF
Atty for 1st Respondent
Town Hall, Manhasset, NY

ROBERT RIVERS
ATTORNEY FOR PETITIONERS
287 Post Avenue
Westbury, NY 11590
(516) 333-3555

RALPH A. NAPPI Atty for 2nd Respondent 33 Main Street Port Washington, NY 11050

HON. DAVID G. TRAGER United Staces Attorney Atty for 3rd Respondent 225 Cadman Plaza Brooklyn, NY

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## United States Bistrict Court

#### FOR THE

EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF: WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS, ROBERT CURRY, MRS. EVELYN BROWN, THOMAS HOLMES, MRS. EPPIE JOHNSON WILLIAM HARRIS, MRS. ALBERTHA JOHNSON, MRS. ROSE WILLIS, MRS. SHARA BROWN, WILLIAM DOBY, MRS. ELLA HARRIS, GEORGE ROSTKY and GREAT NECK MANOR CIVIC ASSOCIATION, and all other similarly situated,

Petitioners,

-against-

ROBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., GEORGE C. SOOS, FELIX G. ANDREWS, JOHN F.
MCDONALD, ARTHUR G. BINGHAM, WILLIAM H. RYAN, JR.,
TOWN OF NORTH HEMPSTEAD, THINKS

First Respondent,

HECTOR H. GAYLE, Executive Director, BERNARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK, LOCAL URBAN RENEWAL PLANNERS.

Second Respondent,

JOHN MARIOTT and GERALD V. CRUISE, DEPT. OF HOUSING AND URBAN DEVELOPMENT,

Reference Third Respondent.

To the above named Defendant :

You are hereby summoned and required to serve upon ROBERT RIVERS word "Applicate required colo if service is more by a per on other to a a vinter states. Wir had or his Deputy

Address of the state of the state of

SUMMONS

[25,417]

plaintiff's attorney , whose address

Represented and electric to perform the 287 Post Avenue Westbury, NY 11590

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of Court.

More MILLER Deputy Clerk.

Date: July 24, 1973

[Seal of Court]

NOTE: The summons is issued pursuant to Rule I of the Pedera! Rules of Civil Procedure.

I neight exit." and return, that on the

.). . . .

I received this summons and served it together with the complaint herein as follows:

(rate: July 24, 1973

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Service By

Deputy United States Marshal.

Subscribed and sworn to before me, a

day of the transport

[SEAL]

Note:--Affidavit required only if service is made by a person other than a United States Marshal or his Deputy. And the pereby intersected and required to serve alone. 2005 of 17.555

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Attorney for Plaintiff ed Amil's

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FOR THE

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UNITED STATES DISTRICT COURT PASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF: WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS, ROBERT CURRY, MRS. EVELYN BROWN, THOMAS HOLMES, MRS. EPPIE JOHNSON, WILLIAM HARRIS, MRS. ALBERTHA JOHNSON, MRS. ROSE WILLIS, MRS. SHARA BROWN, WILLIAM DOBY, MRS. ELLA HARRIS, GEORGE ROSTKY and GREAT NECK MANOR CIVIC ASSOCIATION, and all other similarly situated,

Petitioners,

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- against-

HOBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., CEORGE C. SOOS, PELIX G. MIDREWS, JOHN P. MCDOHALD, ARTHUR G. BINGHAH, WILLIAM H. RYAN, JR., - TOWN OF HORTH HEMPSTEAD,

First Respondent,

HECTOR H. GAYLE, Executive Director, BHENARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK, - LOCAL URBAN RENEWAL PLANNERS,

Socond Respondent,

JOHN MAYLOTT and GERALD V. CRUISE, DEPT. OF HOUSING AND URBAN DEVELOPMENT,

Third Respondent.

The petitioners and all the members of GREAT MECK MAMOR CIVIC ASSOCIATION respectfully show that:

only to protect the proprietary rights of the individual members, but also to endeavor to solve the social problems prevailing in their community.

CLARENCE BRRIS, MARY HOEBS, ROBERT CURRY, MRS. EVELYN BROWN,
THOMAS HOLMES, MRS. EPPIE JOHNSON, WILLIAM HARRIS, MRS.
ALBERTHA JOHNSON, MRS. ROSE WILLIS, MRS. SHARA BROWN, WILLIAM DODGE
MRS. ELLA HARRIS, GEORGE ROSTKY, and all members of the GREAT
HECK MANOR CIVIC ASSOCIATION, are owners of real proparty with

buildings thereon situated within the neighborhood of Spinney
Hill, North Hempstead, County of Nassau, MY, where the Urban
Renewal Housing Project is intended to be built, and all of
whom are property owners, residents and tax payers paying village
taxes for the privilege of residing in an incorporated village
of Manhasset, Nassau County, State of New York.

and at all material times have constituted the Town Board of the Town of North Hempstead. That the second respondents constitute and at all material times have constituted the four town of the Hempstead. That the second respondents constitute and at all material times have constituted the four of Urban Peneual Planners which has responsibility to carry out low-rent housing and/or urban renewal activities in the first of Hanhasset. County of Nassau and develops substantial program of Hanhasset to be used as guidelines in carrying out the local housing or renewal program. That the third respondence constitute and at all material time have constituted Department of Rodeline and Urban Development, department created by the Federal Government to exercise general supervision over the building of low-rent housing.

of May 1972, proposed to build eight to ten million dollar Urban Renewal Housing project for Spinney Hill in the Village of Manhasset/ County of Nassau, State of New York.

for the said project deliberately nelected only one site in a predominantly Black area of Manhasset despite the fact that a survey previously taken by the Town indicated that the vast majority of the tenants applying for the new housing are Black.

However, it was said in CROW vs. BROWN, 332 F Supp 390 (1971),

"For better or worse both by legislative act and judicial decision, this nation is committed to a policy of balanced and dispersed public housing. Among other things, this reflects a recognition that in the area of public housing local arthorities can no more confine low-income placks to a commented and con-

contrated area than they can confine their children to segregated schools."

and wehemently inshannon vo. United States beet. Of housing AND URBAN DEVELOPMENT, 436 F 2d 820,

"The choice of location of a given project could have the effect of subjecting. persons to discrimination becours of their race or have the effect of defeating or substantially impairing accomplishments of the objectives of the program of activity as respects porsons of a particular race. That offers could arise by virtue of the under, concentration of persons of a given race or socio economic group in a given neighbornes to occupants of rent supplement housing and low cost housing, but by occupants of owner occupied ducllings, merchants and institutions in the neighborhood. Possibly before 1964 the administration of the federal housing programs could by concentrating on land use controls, building cods enforcement, and physical conditions of buildings, remain blind to the very real effect that racial concentration in had in the development of urban blight. Today such color blindness is impermissible. Increase or maintenance of racial concentration is prima facts likely to lead to urban blight and in prima facle at variance with National Housing Policy."

- and in accordance with the Housing Act of 1936, a public meeting was held on the 10th day of May, 1972, to emplain to the residents in the locality of the proposed project site the said proposal and to hear any objections to the said proposal.
- 7) That the petitioners, through: their president in the name of William Jones and their attorney, Robert Rivers, endeavored to bring to the attention of the second respondents at the said public meeting the consequence and the legal implications of not only their failure of recommending an alternate site, but also of concentrating a large number of Black people at one neighborhood.
- 8) That the petitioners at the said public raction rade it perfectly clar that they acknowledge the critical mood for housing and housing developments not only for the Torm of North Hempstead but for the entire County of Magaza. Further,

they recognize that this need exists not only for moderate and middle income housing but for low income housing. "It is also underied that sites for the projects which have to be constructed were chosen primarily to further the praise worthy and urgent goals of low cost housing and urban renewal. Nevertheless, a deliberate policy to separate the races cannot be justified by the good intentions with which other laudable goals are pursued." 296 F Supp 914, DOROTHY CAUTREAX vs. CHICAGO HOUSING AUTHORITY.

- they are opposed to the current Spinney Hill Urban Renewal Project on the grounds that as presently constituted, it represents an expenditure of Federal funds for the purpose of bringing about racial concentration contrary to the Federal guidelines and contrary to the enlightened concept of scatter site dwellings.

  That on its face as presently constituted, the plan is prima facie, at variance with the National Housing Policy and will bring about an increase in racial sogregation. In EURTON vs.

  WILMINGTON PARKING AUTHORITY, 365 U.S. 715, it was reiterated that "It is of no consolation to an individual denied the equal protection of the laws that it was done in good faith."
- contravention of Section 601 of the Civil Rights Act of 1964, Title VI, which provides, "No person in the United States shall on the grounds of race, color, or national origin, be excluded from participating in, be denied the benefit of or be subjected to discrimination under any program or activity raceiving federal financial assistance." The location of the project with about 70% Black occupancy in an area with a large Black population will impede a workable program for community improvement in conformity with the Civil Rights Act of 1964 and 1968.
- any attempt to acquire non-segregated sites within the Town

of North Hempstead for the purposes of building low and moderate income housing of an equal potential as that which is now proposed for Spinney Hill.

- 12) That the first respondents, on the 17th day of May, 1972, approved the project knowing that such site was not "optimal," and that it is in direct contravention of the federal guidelines and the Civil Rights Act of 1964 and contrary to the enlightened concept of scatter site dwellings.
- intend to fund the said project. The third respondent knowingly acquiaged in discriminatory housing program and has therefore violated dua process clause of the Fifth Amendment or Section 601 of the Civil Rights Act. (Supra)
- harm the one-family character of the neighborhood houses and bring a concentration of so called minority housing to the area.
- proprietary interest of the petitioners, and to the character of the neighborhood and will bring about an unconcionable Lurden upon the already over taxed Manhasset School District, thereby causing an additional tax burden for the petitioners.
- 16) That upon the failure of the respondents to meet the prerequisite it is the determination of the petitioners to take every step legally necessary to stop the colonization of Black people.

WHEREFORE, the petitioners pray that :

- During the pendency of this action the respondents be enjoined and restrained from commencing the said project.
- 2) Declaratory judgment pursuant to 28 U.S.C.

  Sections 2201 and 2202, that the second respondents have selected site in violation of petitioners constitutional rights.

- A permanent injunction against the radially discriminatory aspects of the public housing system.
- submit and carry out a plan for selection of future alternate sites to eliminate these discriminatory aspects.
- 5) A declaratory judgment that petitioners have the right under the Civil Rights Act of 1964 to end the use of federal funds to perpetrate the racially discriminatory spects of the public housing system and injunction against such a use.

Dated: Mestbury, MY July 18, 1973

PROBLEM TO A SUPERIOR OF THE PARTY OF THE PA

Sworn to before methis

WILLIAM JONES

Commission Expres Me in 37 10 35

#### VERIFICATION

STATE OF HEW YORK) SS:

WILLIAM JONES, being duly sworn, deposes and says that deponent is Petitioner in the within action; that deponent has read the foregoing Summons & Petition and kntws the contents thereof; that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true.

Sworn to before me this day of July, 1973.

WILLIAM JONES

At a Special Term, Part of the U.S. District Court, held in and for the Wastern District at 4:2 Courthouse located at 226 Cadman Plaza East, Brooklyn, NY, 50 the day of July, 1973.

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF: VILLIAM JONES, CLARENCE BRRIS, MARY HOBBER, ROBERT CURRY, MRS. EVOLAN BROWN, THOMBE HOLMES, MRS. EPPIC JOHNSON, WILLIAM HARRIS, MRS. ALBERTHA JOHNSON, MRS. POSE WILLIS, MRS. SHARA BROWN, WILLIAM DOWN, MRS. ELLA HARRIS, GEORGE ROSTRY and GREAT NECK MANOR CIVIC ASSOCIATION, and all other similarly situated,

Petitioners.

#### against-

NORTH HEITSTEAD.

750 1104 ROBERT C. MEALE, JAMES R. WELLS, MICHAUL J. TULLY: JR., GEORGE C. SOGS, FLLIX G. AHDRES, JOHN F. HCDONALD, ARTHUR G. BINGHAM, VILLIAM B. RYAM, JR. . . TO. . OF

onnen. JUDIN CAL .

. . . . . . . . V

First Responde to

HECTOR H. GAYLE, Executive Director, BERNARD GARTLER, Chairman, JOSEPH CCCI, DR. CURTIS KENDRICK, - LOCAL URBA-REMEWAL PLANNERS.

Second Respondent,

JOHN MAYLOTT and GERALD V. CRUISE, DEPT. OF HOUSING AND URBAN DEVELOR TO LE

Shira Rea ondert.

Loon the affidavit of JILLIAI JOHDS, one of the petitioners in the above-entitled action, and the Presist of the said GREAT RECK MATOR CIVIC ASSOCIATION, sworn to the 1/17 day of July, 1973, on behalf of and as roval of the aforementioned petitioners and all the members of the said GRANT NUCK CIVIC MALOR ASSOCIATION, annexed hereto and made a part hersof and upon the Summons and Potition attached hereto an incl. art hereof.

The undersigned will cove this Court

Plaza East Srooklyn, New York, on the Sendary of June 1973, in o'clock in the forencom of that day or as soon thereafter as counsel can be heard for an order restraining and enjoining the second respondents, his agents, attorney, servants, or employees from constructing an eight to ten million dollar urban renewal housing project for Spinney Hill in the Village of Manhasset. County of Nassau, State of New York in pursuance of the proposal made by the above-mentioned second respondent - Urban Renewal Planners - and approved by the first respondent. Town of North Hempstead - and intended to be funded by the third respondent - Dept. of Housing and Urban Development, in contravention of the Federal guidelines and the Civil Rights Act of 1964 and also contrary to the enlightened concept of scatter site dwellings, until the issues in this action between the petitioners and the respondents shall have been finally determined by this Court and for such other and further order as may be just and equitable.

proceedings on the part of the respondents and each of them with regard to the subject property be and is hereby stayed pending the hearing and determination of this application.

SUFFICIENT cause appearing therefore, let service of copy of this order, together with the papers upon which it was granted be served upon the respondents on or before the 27th day of July, 1973, be deemed sufficient.

ENTER:

Jacob Mishler

# UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF:
WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS,
ROBERT CURRY, MRS. EVELYN BROWN, THOMAS
HOLMES, MRS. EPPIE JOHNSON, WILLIAM
HARRIS, MRS. ALBERTHA JOHNSON, MRS. ROSE
WILLIS, MRS. SHARA BROWN, WILLIAM DOBY, MRS.
ELLA HARRIS, GEORGE ROSTKY and GREAT NECK
MANOR CIVIC ASSOCIATION, and all other
similarly situated,

Petitioners.

#### - against -

ROBERT C. MEADE, JAMES R. WILLES, MICHAEL J. :
TULLY, JR., GEORGE C. SOOS, FELIX G.
ANDREWS, JOHN F. MCDONALD, ARTHUR G.
BINGHAM, WILLIAM H. RYAN, JR., - TOWN OF
NORTH HEMPSTEAD,

APPIDAVIT

First Respondent.

HECTOR H. GAYLE, Exacutive Director, BERNARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK, - LOCAL URBAN RENEWAL PLANNERS,

Second Respondent,

JOHN MAYLOTT and GERALD V. CRUISE, DEPT. OF HOUSING AND URBAN DEVELOPMENT,

Third Respondent.

WILLIAM JONES, being duly sworn, deposes and

Bays .

That your deponent is one of the petitioners in the above-entitled action and a President of the said GREAT NECK CIVIC MANOR ASSOCIATION.

That the deponent deposes on behalf of and with consent and approval of the afore mentioned petitioners and the members of the said GREAT NECK CIVIC MANOR ASSOCIATION, and all other similarly situated.

That the deponent and the above-mentioned

petitioners are and at all material times hereinafter mentioned executive members of the said CREAT NECK CIVIC MANOR ASSOCIATION.

That all the members of the said GREAT MECK CIVIC MANOR ASSOCIATION are and at all material times property owners in the town of North Hempstead, area of Manhasset, "Great County of Nassau, State of New York.

of May , 1972, proposed to build eight to ten million dollar Urban Renewal Housing Project for Spinney Will in the Village of Manhasset, County of Nassau, State of New York.

That the second respondents in their proposal for the said project deliberately recommended only one site in a predominantly Black area of Manhasset despite the fact that a survey previously taken by the Town indicated that the vast majority of the tenants applying for the new housing are sleet.

That in nursuance of the said proposal and in accordance with the Housing Act of 1936, a public meeting was held on May 10, 1972, at the Community Service Center, 65 High Street, Manhasset, County of Massau, State of New York, to explain and hear objections to the said proposal.

That the petitioners and the members of GREAT NECK CIVIC MANOR ASSOCIATION, through the deponent and their attorney, ROBERT RIVERS, endeavored to bring to the attention of the second respondents at the said public meeting the consequence and the legal implication of not only their failure of recommending an alternate site but also of concentrating a large number of Black people at one neighborhood.

That the petitioners support housing. However, they are opposed to the current Spinney Hill Urban Renewal project on the grounds that as presently constituted it represents an expenditure of federal funds  $f_0$ r the purpose of bringing about racial concentration contrary to the federal guidelines and the Civil Rights Act of 1964 and contrary to the enlightened concept of scatter site dwellings. The plan is

prima facie at variance with the National Housing Policy and will bring about an increase in racial segregation.

That the second respondents have not made any attempt to acquire a non-segregated site within the Village of Manhasset for the purposes of building low and moderate income housing of an equal potential as that which is now proposed for Spinney Hill.

of May, 1972, approved the said project knowing that such site was not "optimal" and that it is in direct contravention of the federal guidelines and the Civil Rights Act of 1984 and contrary to the enlightened concept of scatter site dwellings.

That the third respondent also approved and intend to fund the said project. The third respondent knowledge acquiesced in discriminatory housing program and was therefore violated due process clause of Fifth Amendment or Section 601 of Civil Rights Act.

That the said project would raise taxes, harm the one family character of the heighborhood nouses and bring a concentration of so called minority housing to the area

That the project will be inimical to the proprietary interest of the petitioners and to the character of the neighborhood and will bring about an unconcionable burden upon the already over taxed Manhasset School District, thereby causing an additional tax burden for the petitioners.

meet the prerequisite, it is the determination of the petitioners to take every step legally necessary to stop the colonization of Black people.

WHEREFORE, the petitioners pray that:

- during the pendency of the action the respondents be enjoined and restrained from commencing the said project.
  - 2) declaratory judgment pursuant to 28 U.S.C

Sections 2201 and 2202 that the second respondents have selected sites in violation of petitioners constitutional rights.

- 3) a permanent injunction against the racially discriminatory aspects of the public housing system.
- 4) an order directing second respondents to submit and carry out a plan for selection of future alternate site to eliminate these discriminatory aspects.
- 5) a declaratory judgment that petitioner have the right under the Civil Rights Act of 1964 to end the use of federal funds to perpetrate the racially discriminatory aspects of the public housing system and injunction against such a use.

Sworn to before me this 18th day of July, 1973.

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Not a structure of New York
No a structure
Commission Expires March 30, 19 44

WILLIAM JONES

POR THE DASTREE DISTRICT COURT OF THE STAYE OF HUI YORK

IN THE MATTER OF THE PROLICATION OF: WILLIAM JOHES. CLARESCE DERIG. MARK HOPES. BORNET CURRY, MAS. EVILLE BELLIN, TROUBS MODIMS, REG. FIPTH JOHNSON, WILLIAM BROTES, AND. BL ERITA JOHNSON, MRS. BOOK WILLIAM BROTES, AND THOUGH, WILLIAM BOOK, MRS. BUTA FARRIS. CHORGE WOLTHY, and CHURY BOOK FUNDS CIVIC ASSOCIATION BOOK BILL Other Similarly Bituated.

Potitionars.

## - egalout -

CONTROL C. MORDO. JAMES R. MINAS, MICHARL B. TULLY, GEORGE C. MORE. PUBLIC. APPENDING, JOHN P. MONOTALD, ARTHUR G. MINISTERS, WILLIAM M. DVAN, JR... TOWN OF MORTH UNIX STDAD.

Index 85.

First Respondents,

ANCTO N. CATAS, Precutive Director, Exchand CARTELL, Chairman, Socurt Chor, Ep. Cubris Ernowick - Local Const Ernowan Firmuse.

Wacond Despondants,

JOSE MATLOST and GUDALD V. CEUISE - DEPT. OF BOUDING AND USERS CONTLOYMENT.

Third Respondents.

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RECTA & Harri Attorneys for forend Posposdents B3 hein farret Post Washington, BY 11000

U. B. AGTORNADY

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## PARTHERING OF THE CASE

This suit was brought by members of Treat Meak Hear Civio Association, bereinsttor referred to as Peaktioners, in their own behalf and on behalf of all other residents of the Village of Fenhasset and Great Mack who are similarly situated, eaching to prevent the construction of 120 units of federally assisted low and middle cost rest bouning for Spinney will in the Village of Humbasset and Great Mech. County of Messan on the grounds that the site selected for construction would perpetrete expropation in public bouning, thus resulting in Cascrimination exclust patitioners and alt other randers of the class they represent.

Pain suit is filed against Lucal trans
Excess! Planaers, Larrinafter referred to as
Eucond Respondents. It needs a declaratory
judgment that the location of the bousing
project in a racially semegated neighborhood,
where other locations for the construction of
such bousing are available violated. The Civil

Elyhte het of 1966 and 1968, as well so equal protection elevant of the fourteenth houndmant and prays for injunctive relief. It also canks declarately judgment against the Town of Horth Hougetsed, hereinsfor referred to as First Respondents, and Department of Housing and Urban Development, hereinsfor referred to as Third Respondents, that the Patitioners have the right befor the Civil Hights Act of 1964 and 1969, to end the ess of federal funds to perpetrate the racially discriminator; aspects of the poblic housing system and injunction equins such a use

### FACTS BELOVANT TO THE ISSUE

On the 10th Cay of May, 1972, the Second Peacondants, who constitute and ot all material tions have constituted the Local Orten Conswell Plenners, which has responsibility to carry out low rept bousing and/or urban renewal sociulties in the Village of Manhagest and Great Reck. County of Bassau, called a public meeting to explain to the public a proposal which involves the construction of 120 units of an night to ten million Golfer bousing project for Spinnay Mill in the Village of Manhooset on! Great Back, County of Massau. However, in its exeposal, the facend Respondents deliberately selected one site in a productionally Black heighborhood knowing fall well that a survey praviously taken by the Tom indicated that the vast rejectly of. the tenners applying for the new housing are Black, while other softeble lesstions for the construction of each horsing are symilably.

ht the said meeting, the Petitioners
through their President in the name of WILLIAM
JOHNS, and their Attorney, ROYMAT BIVING, made

the critical meed for housing and housing development, not only for the Year of Worth Esspetand and the entire County of Hassen, but also that this need emists for soferate, middle and low income housing. Theoretical of the Second Perpendents to bring to the attention of the Second Perpendents the consequences and the legal implications of not only their failure to select an alternate and sore suitable site, but also of concentrating a large number of black people at one naighborhood. Notwithstanding the objections of the Petitioners, the said Econd Economics did not designate a suitable alternate site.

come of such as intentional breach and noncompliance with the housing regulations carried
their objections to the First Respondents
hoping that consthing could be done to avert
a possible legal battle. The Petitioners
efforts were thus read when on the 17th day of
May, 1972, procincly a week after the public
meeting, the first respondents approved the
said housing project knowing that such a
site was not optimal and that it aligh direct
contravention of the federal guidalines.

The potitioners, through their actorney, expressived the Third Empendents in the bope that they might be able to bring to their attention the legal implication involved in colonising Black people. The Third Emspendents, equiesing the discriminatory beasing project, approved the proposal and has sent to the Town, the first year's installment in the amount of \$1.4 million deliars. Besides this, on explication had been made for \$1.173.000.60 from the Federal Meighborhood Development Erecate for the second year's funding of the project.

The Petitioners, having explored all possible evenues to evert this legal battle, have now, no alternative other than to institute this proceeding to eccurt their rights.

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# THE LAS AS APPLIED TO THE FACTS

It has been well established by the various hossing requisions and stabutes that sites for the construction of low income housing chould be estected from enong situe which will afford on concremity for including eligible applicants of all groups, regardless. of race, color, creed or national origin so that members of minority groups could be located outside of the ereas of consentration of their own winority group. Thus Title VI of the Civil Rights Rot of 1964 forbids the construction of Coducally financed public bountey in an all Black maighide bood in the abaugue of a class showing that no other acceptable sites are available. The most recent interpretation provides as follows:

The min of a local authority is corrying out the responsibility for site anisotics about the careful attention about the color of the allocation of the arction of the articles which arithmia of this arction of the present or apprincitly for includion of slipping articles of site or allocation of all proper are extent or patient origin. The original origin, the relation of their proper are extended or patient or incurity or increase of their origin.

Any proposal to locate housing only in areas of radial concentration will be prime forte unaccombable and will be returned to the local authority for further consideration and submission of either (1) alternative or additional ef en og egong medfo at godia privide more balanced distribution of the proposed housing or (2) a class chawing, factually oubstautisted, than so acceptable titos are available outside the areas of concentration." ISS RIGHT COUNTED MATTER 209.1 4(G) February 1987 havision.

The principle that location is highly relevant to non-discrimination is public programs has been recognized in the analogous area of School construction. THITUD STATES VS. ROADD OF PUBLIC INSTRUCTION OF POLIC COUNTY 395 F 24 56. UNITED STATES Vs. STEPPERON COUNTY 399 F 24 385.

That same principle is applicable to prolice bearing. This overriding principle was alwardy stated in GAUTHMASE vs. CHECAGO 1903127 AUTHORITY 265 8 Supp 582 at 583.

Theintiff -- bare the right -- to have sives soleeted for public housing projects without regard to the rapid tongondition of either the surrounding pelighborhood or of the projects thesesives."

The project in question here was interded for occupancy of people of which, as indicated by the survey previously taken by the Town, a

the Second Respondents considered only the site located within all black or virtually all black neighborhood and therefore selected only a site in a blank noighborhood. Then the project was clearly conquived to provide housing for Blacks in a black paighborhood. It was impliminted with this intent and its present posture conforms to its original derign. its purpose therefore in deing so was to maintain engragation in public bouning in the area of Great Each and Machesont and the fact that it is intended to provide housing for low income people does not excuse the Respondents from maintaining and perpotrating racial sogregation contrary to the federal quidelines. Thus to CAUTERAUX ve. CORCAGO ROUSING AUTHORITY 296 P Supp 914.

for the projects which have to be countracted which have to be countracted when chosen primarily to further the proise-worthy and argest goals of low cost bousing and srings consumi. Herertheless, a deliberate policy to separate the races count be identified by the good intentions with which other landable goals are parausd.\*

Respondents have fulful to design to conform to conform to be added to conform the conformation. Decrease, if not enjoined the formations with the conformation and conformation and conformation and conformation and conformation with the conformation and conformation and conformation and conformation and conformation with successful to conformation and conformation and conformation which is the formation of the conformation and co

an order to created directing focust Passendana to subsite and cover out a mine for soleration of future attracts with a plant to eliminate these discriminates; corrects.

PUTTE TO MESTERS DESIDED PRODUCT PROGRAMME

You Colomby Hill project as resently ರಾಣಾರಭಕ್ಷಾಗು ಕ್ರಾಣಾವಾದಗಳಿಗೆ ಕೂಡ ಕಾರ್ಯದಲ್ಲಿಕೆ ಮಾಡಿಯ ಪ್ರಕರ್ಣಿಸಿ Figure 212 Curie for the progress of bringing scent resist espisyettes distrery to the esticioned corneagh of filterally of dated coordays, bosting primate to. This primate and element common the fillial dat Laster too the relief to be

> they be the or nerge here by 2: 14:113 ార్థి కివాధిక్షాల్లో సింది గుగా ಕಾಲಿದ ಅವರ ನಿರ್ದೇಶಕ ಕಾರಿಸಿ ಅವರ ನಿರ್ವಹಿಸಲಾಗಿ ಪ್ರವರ್ಷಕ್ಕೆ ಮಾಡಿಯ ಕ್ಷಮಿತ ಕಾರ್ಯ ಅಧಿಕರ್ಣ ಕ್ಷಮಿತ ಕಾರ್ಯ ಕ್ಷಮಿಕ ಕ್ಷಮಿತಿಯಾಗಿ ಕ್ಷಮಿತಿಯ ಅವರ ಕ್ಷಮಿತಿಯ ಕ್ಷಮಿತಿಯ ಕ್ಷಮಿತಿಯ ಕ್ಷಮಿತಿಯ ಕ್ಷಮಿತಿಯ ಕ್ಷಮಿತಿಯ ಕ್ಷಮಿತಿಯ ಕ್ಷಮಿತಿಯ ಕ್ಷಮಿತಿಯ Classia di nei 160 fereina. Acong 1 colors trings to be got Tooks a ស្តារដល់ផ្លាស់ បានសមាស្រក និស្សការ៉ា ខេស្តប៉ាក់ ការ៉ាត់ប៉ាក់កា សព្វ ការ សព្វផ្សាស សាព្យាល័សថា ប៉ុន្តែសង្គាល បាន ఖక్డారం కథ ఉండానాగారి కర్ణిశ్వర సింద్యంలో to be there to by the order of the o Allen to enganger 1 comesso.

IN to not and in our name boom the Authoritan of the besition is to introles in the శ్వాతం అన్ వివ్యాలకుముదు. ముందా అంతారు కన్నాయకుడు. ఉన్నకున్నారి డావిళ్ ఉండికుకునుడినికులుండా కూడా కడుపుకుర్గా కోస్ ఆస్థిందినినికి జాగా ాట్లు కాటుండా మంచారుకుండా ఇండుకి ఇండ్లో జాటిందినకుండా ఉంది. ప్రామెక్ట్ లక్ ಪ್ರದರ್ಭಕ್ರಗಳ ಲೀಪಾ ಕ್ರಾಫ್ ಬೆಟ್ಟಾರಿಯ ಸಂಗರ್ಥನ ಬೈಕ್ ಅದಲ್ಲಾತ ಅತ garant sweaty too consistantion of low income Brusing viscociest too villegs of Nerthauset be no to Encient the concentration OF BOT TOOK IN ONE THIS CONTROL COLL NO. ಹಾದಳವರ್ಷದ ಸಂಚಿತ ಭಾರತಿಕ ಹಿಡ ಕಾರ್ಯಾಕ ಕೆರುಪಿಸಿಗಳುತ್ತಿದ್ದಾರೆ, ಕರ್ಲಾ ೧ ೪

to litigation, the monait of which would then compatible the remarkable of which would then compatible the remarkable of relations to rell octabilished principle of recommends to rell toucher, the membershes, in implementing their projugnes have dutiled and elligations and to interest ony program which disnottly or indirectly cande have the effect of subjecting persons to discribing the first projecting persons to discrimination. Then is spinning was, to jump the discrimination, or receive the paper program.

"The chaics of Icabies of a circa partiest could have the effect of tubguesting persons to disculate whitein an act to the street of hotel in alvina commental motor as as as nextentry in a suppose to process of a process of a process of a process of the court of the cou trees es corrervator of procure til a giva ta y sa recto e maeria grain in a vivon reinite. time offices continue felt not enly by occupation of south an alarme Educator and for come hoursen had by concernate of once or or to Cor 13 ingo, reprisents and in the billions in the program would. Through the bo form 1964 the contentation of the followed hands a progress carlaby commonwating on the e wirmia, bribliam enda entos. ord physical confisions of ball rage. transin istand to time to the afford that worded organic ties had bad da to a decrease and of the blindness is in a priceible.

మేదే మారాంగ్రామ్లు అట్టి మాందుకోరాడి చిందింది. రాజర్గాన్ గాన్రిగా ఉమ్క రాజక్సాతా టెవరమ్త క్రికంలక్షం మీతం మీరారం గ్రామం కారార్గాన్ మారంగి మీత రాజక్స్తా కార్స్తు కారాయ్లు అంది. మ్మాన్ట్యాన్ని క్రాజర్గంత కారంశ్వితం కా.

the to the constraint of the Spiner Bill project the till not only be intedept to the Character Bill project of the Spiner Bill project will not only be intedept to the Character of the originary so intedept to the Character of the originary so were to decimal solution to be the sent of cooly over towed Muchanest Coheal Discoulate, thereby country on a and interest towed to be the force of the political.

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Proceedant Migon on June 11. 1971, and the begans

of the potitioners that it is their duty to revent any contravention of the National Educing Folicy. The Potitioners, therefore, wray that the respondents be enjoined and restrained from construction of the Spinney Hill Project on the grounds that the respondents have felled to conform to the frequency founds from how felled to conform to the frequency founds.

PROTECTION CLASSIC OF THE POSTLE LITTLE ASSESSED

The construction of the project in a neighborhood which has vest number of Black no culation violated the Civil Rights Acts of 1964 and 1968 and the equal protection clause of the Pourteenth Reseducet.

Act of 1964 provides.

Ho poroso in the Daited States sould on the grounds of race. Color or national origin he excluded from participating in or he denied the benefit or he subjected to discrimination under any program or ectivity receiving fractal financial assistance.

The 1968 Civil Nights Act also provides that:

The is the policy of the United Venter to provide within constitutional limitation. For Sair housing throughout the United States. (d) The fectorary of unusing and United States, element from the programs and schizer the programs and schizer the programs and schizer the frograms and schizer the frograms and schizer the fermitter the policies of this succession."

te in clear that the location of the project with 70% plack occupancy to an area with a large tiack population will impose a workable program for community improvement in

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conformity with the Civil Rights Act of 1960 and 1960.

Pourtsonth Amendment Coction the provides,

"... Nor deny to any percen within the feriodiction the equal protection of the leve."

the leads than is whother the temperalizate are in edequate compliance with the Civil Hights Act and the equal protection clause of the Fourtheath Amendment.

Thus taking togother and in view, their mistroical content, the setions of the respondents in resisting attempts designed to achieve the tetlonal housing toling of balanced and dispersed public nousing and failing to assist such attempts, violate the equal protection classes of the Fourteenth Americant and the Civil Pichts Act.

It was clearly stated in FICES vs. MERVAR 202 F Amp. 519 (1969)

where dorinnot factor in telecting situm for location of public fouring was maded concentration of noighborhood and purpose was to postratio bountar and present in public bountar and present location of river and present location of river fact in all Place matchborhood would most likely postedion superiodion, this was round disculation of the Postedion of the Postedion and Civil Digits Acts of 1964 and 1960."

Under the equal protection clause of the Fourteenth Assochant racial discrimination may no cetablished either by proof of purpose or of affact. The location of Spinney Hill Project is in direct contrevention of the Civil Rights Act and the equal protection clouse Lecensa Redoral funds are being word to mainteln recial segragation and the effort of concentration Black proble in one neighborhood when those in an alternate suitable seighborhood where such a project could be built constitute an esparant discrimination. In dious vs. HCAVED (Supra) the Court proliniportly enjoined the defondance from communcing any work toward the construction of low income housing in an all Slock neighborhood on the grounds that the Civil Bights Acts forbid construction of foforally finemood public housing in an all Black neighborhood in absence of cleur showing that no other neceptable sites are available.

nover any indication that an attempt or effort was noted by the second respondents to acquire a site in a neighborhood with a small block population. In such discussiones the only denotesion the positioners could draw in that

consumust the project in a protection the const to consumust the project in a protection civil bicks here and the equal protection clouds of the Four-toward Ascademate and the fact that they are cuing it in qual feith does not excalpate than. In Alexandry you was principled that.

It is of no concolation to an individual denied the opening protection of the laws that it was done in your faith.

program of the respondents will make it virtually impossible to achieve examingful school description. Indeed, as even a glissering of objectivity will displace, a disposal of orban hossing patterns is the only alternative to measure busning if description rather than these jetion is to be achieved.

It is therefore the wish of the Petitioners that relief from this violation of the centiltesional and statutory rights of the Petitioners and the class they represent would be granted by this Court.

## PUBLIC POLICY

allow the respondence to construct the said low income housing at Spinney Hill which is not only against the Civil Eights Acts and the equal protection clause of the Fourteenth Amendment but also infringes the accepted principle of "federally mandated scattered housing principle."

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### CONCLUBION

It is respectfully requested that this tourt grant an order,

- (a) Unjoining and restraining the respondents from commencing the said respect.
- (b) becisting that pursuant to 20 9.3.0.
  Sections 2201 and 2002, that the record respondents have solected a site in violation of Potitionars operational rights.
- (c) Enjoining the maspondants secumently against the racially discriminatory aspects of the public Enscion system.
- (4) Directing Second Rest and onto to cubsit and carry out a plan for selection of future alternate sites to eliminate these discriminatory aspects.
- (a) Granting relief from the respondents violation of the constitutional and statutory rights of the Putitioners and the class they represent.

Tours etc.

RODERY RIVERS, Esq. Shinning for Patitioners 207 East Syspen Westbury, NY - 11390 UNITED STATES DISTRICT COURT OF THE STATE OF NEW YORK FOR THE EASTERN DISTRICT

IN THE MATTER OF THE APPLICATION OF WILLIAM JONES, CLARENCE BRRIS, MARY HOBDS, ROBERT CURRY, MRS. EVELYN BROWN, THOMAS HOLMES, RS. EPPIE JOHNSON, WILLIAM MARRIS, MRS. AL ERTHA JOHNSON MRS. ROSE WILLIS, MRS. SUARA BROWN, WILLIAM DOBY, MRS. ELLA HARRIS, GEOPGE ROSTKY and GREAT NECK MANOR CIVIC ASSOCIATION, and all other similarly situated.

Detitioners,

APPIRMATION
IN OPPOSITION TO
RESPONDENTS MOTION
FOR SHMMARY JUDG
MENT DISMISSING
COMPLAINT

#### - against

ROBERT C. MEADF, JAMES R. WELLS MICHAEL J. TULLY. JR. GEORGE C. SOOS, FELIX G. ANDREWS, JOHN F. MCDONALD ARTEUR C. BINGHAM, WILLIAM H. RYAN JR. TOWN OF NORTH HEMPSTEAD,

Index No. 730 1104

First Respondents.

HECTOR H. GAYLE. Executive Director. BERNARD CARTLER, Chairman. JOSEPH CECI. DR. CURTIS KENDRICK. LOCAL URBAN PENEVAL PLANNERS,

Second Raspondents.

JOHN MAYLOTT and GURALD V. CRUICE, DETER OF HOUSING AND URBAN DEVELOPMENT.

Third Respondent.

- - - X

STATE OF NEW YORK) COUNTY OF NASSAU

ROBERT RIVERS an attorney duly admitted to practice in the Courts of this State affirms under penalty of perjury and pursuant to Rule 2106 CPER that the following facts are true.

That your affirmant is an attorney for the Petitioners in the above-entitled action and submits his affirmation in opnomition to the First Respondents motion for summary judgment dismissing the complaint of the Petitioners.

That it is alleged in the said motion by the Pirst Respondents that the Petitioners in the within proceeding are not aggrieved parties and proper persons of the class who are entitled to seek leave of the Court for the remedies sought herein. It is submitted that the Petitioners in the within proceeding are owners of real properties within

the neighborhood of Spinney Hill, North Hernstead, where the Urban Renewal Housing Project is intended to be built. The real properties owned by the Patitioners are in the character of one family houses. The petitioners have alleged in their petition that the project would not only harm the one family character of the neighborhood houses, but also bring about an unconscionable burden upon the already over taxed Manhasset. School District thereby causing an additional tax burden for the Petitioners. The Petitioners therefore are among the class to be affected by the construction of the Coinney Hill Project and have standing as aggrieved parties to be entitled to see leave of the Court for the remedies sought herein. The

That the First respondents further allowed that the Petitioners are quilty of laches since this proceeds was not commenced within a year after the sublic hearing bal on May 10, 1972. It is the contention of the Petitioners that after the said bearing and in view of the Petitioners opposition to the said construction of the Spinnay Bill Project the Second Passondants, the Local Urban Renewal Amency, rade a verbal promise that they would be recommending an alternate site. The Petitioners however, had no intimation that the said verbal promise would be breached. It was only when the site for the construction was being cleared and the Second Respondants made it clear by their conduct that they were not coing to recommend an alternate site that the Potitioners realized that the Second Respondents were not going to abide by their verbal promise and as the First Respondents are well aware, the clearance of the site took place less than a year after the commencement of this proceeding and therefore the Petitioners are not and cannot be guilty of laches.

That it is conceded that the Congress of the United States directed that complaints as to discrimination

practice in housing be reviewed and handled within the Department of Housing and Urban Development of the Federal Government. On the basis of this direction, however, the Petitioners and your affirmant requested a meeting with the said Third Respondents to see if the proposal of the Spinney Hill Project could be reviewed. The said request was granted and the Petitioners had their first meeting with the Third Pespondents on September 8. 1972, and their second meeting on June 18,  $1^{\circ}73$ After a long discussion with the said Third Respondents the decision of the First and Second Respondents was not reversed and the Petitioners were even advised by the said Third Respondents that the cally course left to the Petitioners is to institute this proceeding. It is therefore untenable for the First Respondents to suggest that the matter herein and the relief sought are not properly before the Court in view of the fact that all available administrative rovies has not been sought by the Petitioners. It is the submission of the Petitioners that they have properly proceeded through the channels of review afforded by such agency and that there is sufficient crounds to invoke the jurisdiction of the United States Distract Court

That the Potitioners named as First
Respondents, the parties whose names appear in the Building
Zone Ordinance of the Town of North Merostead booklet as officials
of the Town of North Mempstead and therefore if by some reason
those officials named as parties, are not proper parties by
virtue of the fact that the said individuals are not associated
with the government of the Town of North Mempstead then the
Petitioners concede that the action should be dismissed as
against those individuals.

THEREFORE, Your affirmant respectfully prays that this Court other than dismissing the action as to the Respondents, ROBERT C. MEADE TAMES R. WELLS, GEORGE C. SOOS, FELIX G. ANDREYS, JOHN F. MCDONALD ARTHUR C. BINGHAM and

WILLIAM H. RYAN as not being proper parties deny the motion of the Pirst Respondents in all respects.

Dated Westbury Nov August 13, 1973

AFFIRMED UNDER PENALT" OF PURJURY:

ROBIRT RIVERS

U. S. ATTORNEY HAROLD FRIEDMAN Attorney for Third Respondents 225 Cadman Plaza East Brooklyn, New York

RESSA & NAPPI, ESQS.
Attorneys for Second Respondents
33 Main Street
Port Washington, New York 11050

ROBERT RIVERS, ESQ. Attorney for Petitioners 287 Post Avenue Westbury, New York 11590 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN THE MATTER OF THE APPLICATION OF: WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS, ROBERT CURRY, MRS. EVELYN BROWN, THOMAS HOLMES, MRS. EPPIE JOHNSON, WILLIAM HARRIS, MRS. ALBERTHA JOHNSON, MRS. ROSE WILLIS, MRS. SHARA BROWN, WILLIAM DOBY, MRS. ELLA HARRIS, GEORGE ROSTKY, and GREAT NECK MANOR CIVIC ASSOCIATION and all others similarly situated,

Petitioners,

Index No. 73C 1104

-against-

ROBERT C. MEADE, JAMES R. WELLS, MICHAEL
J. TULLY, GEORGE C. SOOS, FELIX G. ANDREWS,
JOHN F. MCDONALD, ARTHUR G. BINGHAM,
WILLIAM H. RYAN, JR. - TOWN OF NORTH HEMPSTEAD,

First Respondents,

HECTOR M. GAYLE, Executive Director, BERNARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK - LOCAL URBAN RENEWAL PLANNERS,

Second Respondents,

JOHN MAYLOTT and GERALD V. CRUISE - DEPT. OF HOUSING AND URBAN DEVELOPMENT.

Third Respondents.

### STATEMENT OF FACTS

Pursuant to the provisions of an act of the Legislature of the State of New York, Chapter 447 of the Laws of 1967, the Town of North Hempstead Urban Renewal Agency was created to develop, plan and

implement programs for housing with the Township.

Subsequent thereto, the Agency and the Town entered into agreements to implement this purpose in conjunction with and subject to the laws and regulations of the United States Government. In early 1972, concrete proposals for redevelopment of an area known as the "SPINNEY HILL" site in the unincorporated hamlet of Manhasset, New York, were propounded.

After due notice and publication, a meeting of the Planning Board of the Town of North Hempstead was held at a site within the project area on May 10, 1972. At this time approximately 225 people were in attendance. The stenographic minutes of that hearing, 121 pages, indicate a full and complete public posture and statement of position.

Subsequent to this public meeting of the Planning Board, the Town Board of the Town of North Hempstead, the legislative body for said Township, held a public hearing, after due and published notice, prior to the adoption of resolutions ratifying the project. The hearing was a full and open review of the project, including debate and comment by the public. The hearing and adoption was on June 13, 1972, and not the May 17, 1973 date cited in petitioners' memorandum.

The petitioners appeared at both forums and were among the many individuals and groups who presented their views on the proposed construction of approximately 175 units of federally-assisted housing in the area. The site in question is one of several in the Township were the local government has provided low-cost housing, urban renewal develop-

ment, senior citizen housing, and the like.

Since that time, the Town of North Hempstead, the Agency, and the Federal Government have expended considerable time, effort, and funds in proceeding with the project. The entire thrust of this effort has been to build replacement housing with the same community for residents therein who live in substandard or poor housing.

The pending action was commenced on July 24, 1973, a period of one year from the date of the definitive legislative action. The petitioners herein seek at this late date to undo all the effort and planning heretofore made and to impose their personal and private views as the guidance on this subject.

The Memorandum of Law submitted in support of a Motion for Summary Judgment by the first respondents and the following commentary cite ample and sufficient reason for the lack of substance in this action.

## POINT I

LOCAL GOVERNMENT COMMITMENT TO DIS-PERSED PUBLIC HOUSING

In selecting sites for federally-financed housing, and in approving those sites selected by private sponsors and developers, the Department of Housing and Urban Development must make what is essentially a quasi-legislative decision. (Shannon v. U. S. Department of Housing and Urban Development, 436 F. 2d 809 [3rd Cir. 1970]). Similarly, the Town of North Hempstead, through its Planning Board and Town Board, is engaged in a legislative function when it considers whether a specific urban

renewal plan conforms to a comprehensive community plan for the development of the municipality as a whole and whether it is consistent with local needs and objectives. Once these determinations have been made, they are entitled to a presumption of propriety and correctness. The burden, then, is upon the petitioners to demonstrate that the decisions of H. U. D. and the Town Board and the Town Planning Board are without any rational basis. (N. L. R. B. v. James H. Matthews and Co., 342 F. 2d 129 [3rd Cir. 1965]).

For at least twenty-five years there has been an overwhelming need for clearance and renewal in the Spinney Hill area. The area is considered blighted and is eligible for clearance and redevelopment on the basis of H. U. D. 's criteria. H. U. D. has made an informed judgment and has determined that the need for physical rehabilitation at the site is clear and present and, in approving this Neighb 100d Development Plan, has at least impliedly decided that such need nearly outweighs any disadvantages which may result, including increased or perpetuation of alleged or possible racial concentration. The decision to approve the plan for Spinney Hill was made in accordance with proper and adequate procedures and should not be overruled by this Court absent a showing that such decision was arbitrary and capricious. (Coffey v. Romney, Dist. Ct., N. C. [1972]; So. East Chicago Commission, et al. v. H. U. D., et al., 343 F. Supp. 62 [1972]; Croskey St. Concerned Citizens v. Romney, 459 Fed. 2nd 109). Although the Town of North Hempstead has limited experience in the field of urban renewal and urban planning, it has engaged

in some efforts and will be involved in many more in the future. Spinney Hill is only one site in a broad program which will ultimately result in widely dispersed public housing. For example, the Town plan has produced housing in Port Washington, Manhasset Valley and Roslyn Heights for low income and middle income residents. In addition, there is another site which is presently being negotiated subject to site development plans. These proposals are in addition to construction in the Roslyn area and existing public housing.

Both the public housing now available in the Town of North Hempstead and that proposed for the future reflect attempts by the Town to provide suitable living conditions for all its residents. In so doing, the Town must consider the entire area within its boundaries. The Town Plan includes geographically dispersed housing, as well as economically diversified housing units. The Spinney Hill project cannot be considered in isolation; rather it must be regarded as one aspect of a broad plan for total community improvement. In reviewing the validity of the Spinney Hill site, the Court is, therefore, compelled to view it in this broad, town-wide context.

Viewed from this perspective, it is clear that the Spinney
Hill site has been selected with a view both to the pressing needs of the
immediate area itself and to the larger program of providing alternative
housing opportunities to Town residents. The site meets the federal
criteria applied by H. U. D. in its review of proposals for programs
under the Neighborhood Development Plan and is in full compliance with
federal policies with respect to providing adequate housing for all in-

dividuals. This is not the case of a public housing development which will be erected in a previously vacant or predominantly commercial area. Rather, this is a situation of compelling need for new housing to replace currently blighted conditions. As such, the site has not been "selected" as the term is generally employed. Indeed, construction of the project at this site is mandated by the deplorable conditions now prevalant in the area.

### POINT II

FAILURE TO SHOW DISCRIMINATION BY RESPONDENTS.

A major consideration to be evaluated by the Court is whether the proposed project--replacement of rundown and inadequate housing--will have the effect of project and advancing discrimination because of race, color, religion, ethnic background, etc. The petitioners have not shown either inferentially or statistically that any of those grounds were a motivating factor or the consequential result of the respondents' actions and the proposed project.

The respondents neither intentionally nor negligently discriminated in the administration of the housing program. Petitioners contend that the purpose of the Urban Renewal Project is to "COLONIZE BLACK PEOPLE" and "WILL BRING ABOUT AN INCREASE IN RACIAL SEGREGATION". No evidence of this intent or result has been presented to date by the petitioners. The public hearings of May 10, 1972 and June 13, 1972, and the pleadings herein, attest to this fact. The factual

motivation and the results of the project are proper and material factors to be evaluated by the Court. (Gautreaux v. Chicago Housing Authority, 296 F. Supp. 914).

The program conceived as the Neighborhood Development Project has been developed with full recognition of the Civil Rights Act of 1964, 42 U. S. C. A. 2000, and the recommended guidelines of the Federal Government. The Matter of Hicks v. Weaver, 302 F. Supp. 619, cited by petitioners, can clearly be distinguished from the instant facts. The law and facts cited therein are inapplicable to the present matter.

The Court should take cognizance of the fact that in propounding such a project, the Urban Renewal Agency directed that a general preference would be granted to present residents of the community who lived in substandard housing. This posture and position were and are fully in accord with the rules and regulations implementing H. U. D., Title VI regulations and the Civil Rights Act of 1964. The determinations made in this matter were informed and considered. The Court should not enjoin or distrub the decision. (Southeast Chicago Commission, et al. v. Dept. of Housing and Urban Development, supra).

This view was recognized by the President of the United States in his statement of June 11, 1971 on Equal Housing....Where predominately poor members of a racial minority are concentrated heavily in one particular area of a central city, the question of where to build housing.....is not often easily answered.....failure to build a portion of it there could be unfair to the people who choose to live there, as well as reinforcing

the housing blight that often prevails in such areas....". The project under attack by the petitioners has been fully evaluated in light of this posture.

The burden of proof in this action stands upon the petitioners to show non-compliance with Federal Law. The respondents--governmental agencies--must be presumed to have acted in accordance with the law in the absence of such evidence. The action is void of any facts to support the contention of petitioners of non-compliance by the respondents with Federal Law.

It must be recognized that the guidelines are optional qualifications and recommendations. They are not absolute mandates. Petitioners' standards of "enlightened housing concepts" and "guidelines" may not be used to effectively prohibit the legislative activity of a government if such activity is proper and gives full cognizance to existing legal mandates and the needs of its citizens. Legislative activity is an exercise of discretion by government elected for that purpose. Only a blatant abuse of this discretion should justify judicial movement in the legislative process. (N. A. A. C. P. v. Gallion, 290 Fed. 2d 337).

## POINT III

COMPELLING GOVERNMENTAL INTER-EST IN SITE.

The existing conditions at Spinney Hill make it imperative that provisions to remedy the situation be taken immediately. Over-crowding of residents, traffic congestion, noise, and accumulation of

refuse make the area dangerous to the public health and safety. Clearly there is a supervening necessity and a compelling governmental interest for this Neighborhood Development Program at Spinney Hill. (Crow v. Brown, 332 F. Supp. 390 [1971], 457 F. 2d 788 [1972]).

If the situation now existing is permitted to continue unremedied, Spinney Hill will rapidly become an area of unalleviated blight, and the hardship of the poor in that area will be beyond reclamation or abatement. The Town has the imperative responsibility of assuring that this result will never be actualized. In addition to forcing upon those individuals who live in the area sub-standard living conditions, the situation, as it currently exists, has a detrimental effect on the community as a whole. Overcrowding with all its socially deplorable consequences cannot be tolerated any longer.

This compelling need clearly outweighs any disadvantages of increasing or perpetuating any alleged minimal racial concentration should such result, in fact, ensue. (Shannon v. H. U. D., Supra).

In determining the need for and feasibility of the program, the Town of North Hempstead has been conscious of the need for reducing the density of population in the area, the necessity for better measures of environmental control and the need for better conditions under which the provision of public services may become more efficient and more effective.

These factors have been recognized as crucial to the local authorities' determination of site selection for public housing. (Gautreaux v. Chicago Housing Authority, Supra).

Since the site has been selected with due regard for the Town's

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duty to all its inhabitants and is justified by compelling governmental interest, it meets the federal requirements for the construction of public housing.

## POINT IV

## EFFECT OF PROJECT ON AREA.

In developing the proposal for the Spinney Hill site, the Town, the Agency, and H. U. D. carefully considered and evaluated the effects of the project on the local area

The existing buildings evidenced many instances of overcrowding or improper locations of structures on the land. Of the total of seventy-five buildings in the project area, more than eighty (80%) percent may be classified, under federal criteria, as structurally substandard to a degree requiring clearance.

The many lots with insufficient parking create a spill-over of vehicles to the streets and intensifies the traffic conditions. This further aggravates the adv erse environmental factors existing in the area.

The specific proposal contemplates razing of structures, realignment of streets, and the creation of adequate and proper dwellings on plots specifically laid out for the project. Construction, landscaping, and other features must and will be in conformance with modern building codes and zoning ordinances.

The proposal will not accelerate the decline of the neighborhood, but will drastically intensify the value of the surrounding lands. Contentions of an adverse effect on the existing tax base are unwarranted and unfounded. Redeveloped property, particularly with adjacent commercial projects as an integral part of the proposal will give rise to a higher tax rateable and generate additional tax dollars for the locality and school district. This property, when redeveloped, will remain in private hands and will provide a measure of tax revenue not now present.

The Court should recognize that the existing school system is fully integrated from the entrance level through and including the high school. There is no adverse effect foreseeable by this project on the local school situation. The considerations reviewed in Coffey v. Romney, Supra, and Graves v. Romney (Dist. Ct. Mo. 1973) are not present herein.

The entire project contemplates 175 units of multiple family housing and there are over 140 individuals and families within the planned area at present. The presence of 35 additional housing units and the possible additional children who will attend the local school system will have an insignificant impact on a system that currently has over 2900 children in attendance. Concern about increased school costs might better be equated with lower welfare housing costs because adequate housing would then exist. The needs of low-income families must be recognized and attended to. (Sasso v. City of Union City, 424 F. 2nd 291 [1970]).

The entire project must be evaluated, recognizing that material or major shifts of population or people is not intended or forecast. The Agency does not intend to develop a previously vacant area, but to replace existing inadequate housing for the current residents with new housing.

There is to be minimum displacement of people who live in the

area. The weakness in the concept of uprooting people from their neighborhood, friends, churches, schools, and the like as a sacrifice to the petitioners! "enlightened housing concept" is not found within the proposed project.

Any blighted area replete with sub-standard housing generates other effects--economic, environmental, moral, and cultural, among others. To equate a desire to improve these factors with an intent to "Maintain Segregation in Public Housing", as the petitioners contend, must tax the credibility of listener or reader. Petitioners would bar all the attendant advantages of new housing to the residents of the area on the grounds of the color of the residents within the project area and for no other reason. This logic is unsound and must be discarded by the Court. (Shannon v. H. U. D., Supra; Crosky Street Concerned Citizens v. Romney, Supra). The current residents of the area must be granted the right to have adequate housing notwithstanding the racial effect of the project. (Otero v. New York City Housing Authority, D. C. S. D. N. Y.

## CONCLUSION

The existing proposal for low- and middle-income housing on the "Spinney Hill" site recognized the needs of the community, is desirable for the residents, and is in full accord with the recognition of

the residents' Civil Rights under Federal and State Law. The instant action by petitioners is without merit and should be summarily dismissed.

RICHARD OSTERNDORF, ESQ.
Counsel to FRANCIS F. DORAN,
Town Attorney
Attorney for First Respondents
Town Hall, 220 Plandome Road
Manhasset, New York 11030

516 MA 7-0590

# UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF:
WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS,
ROBERT CURRY, MRS. EVELYN BROWN, THOMAS
HOLMES, MRS. EPPIE JOHNSON, WILLIAM
HARRIS, MRS. ALBERTHA JOHNSON, MRS. ROSE
WILLIS, MRS. SHARA BROWN, WILLIAN DOBY,
MRS. ELLA HARRIS, GEORGE ROSTKY and
GREAT NECK MANOR CIVIC ASSOCIATION, and
all other similarly situated.

Civil Action No. 73 C 1104

Petitioners,

AFFIDAVIT OF HECTOR H. GAYLE IN OPPOSITION TO ORDER TO SHOW CAUSE OF PETITIONERS

### -against-

ROBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., GEORGE C. SOOS, FELIX G. ANDREWS, JOHN F. McDONALD, ARHTUR G. BINGHAM, WILLIAM H. RYAN, JR., -- TOWN OF NORTH HEMPSTEAD.

First Respondent,

HECTOR H. GAYLE, Executive Director, BERNARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK, - LOCAL URBAN RENEWAL PLANNERS.

Second Respondent,

JOHN MAYLOTT and GERALD V. CRUISE, DEPT. OF HOUSING AND URBAN DEVELOPMENT.

Third Respondent.

STATE OF NEW YORK )

 $$\operatorname{\mathtt{HECTOR}}$  H. GAYLE, being duly sworn, deposes and says the following:

1.) That I am the Executive Director, Town of North Hempstead, Urban Renewal Agency, the second respondent herein and I am familiar with the facts and circumstances of the within proceeding.

- 2.) That I submit this affidavit in opposition to the Petitioners apprecation for an injunction.
- 3.) That your deponent has been contacted by many of the Petitioners in this action and they have advised me that they did not consent to their being named as a petitioner in this proceeding. That annexed hereto and made a part hereof and marked "EXHIBITS 1A, 1B and 1C" are signed statements from several of the petitioners disavowing any right to the use of their names as Petitioners.
- A.) That upon information and belief the Great Neck Manor Civil Association is composed of a small group of individuals and that Petitioner, William Jones, does not speak for the vast majority of the residents of Great Neck Manor. That the vast majority of said residents are overwhemingly in favor of the re-development of the so called Spinney Hill area and have so stated their support at two public meetings in 1972 at various private meetings, and by affixing their names to a petition containing over 700 signatures. (See Attached) That included in this group are at least two (2) past presidents of the Great Neck Manor Civic Association. That Great Neck Manor is not part of the area to be re-developed.
- 5.) (a) I would like to clarify what the Second Respondent proposes to accomplish in the "Spinney Hill" area of Manhasset, Town of North Hempstead, Nassau County, New York. We are re-developing a blighted area within the unincorporated area known as Manhasset, which will include commercial, recreational and residential buildings, all geared toward a better social, economic and environmental climate for the residents.

Approximately 80% of the buildings in

the area are classified as "blighted". This deterioration has and will continue to effect the surrounding areas of Spinney Hill and has resulted in overcrowding, dangerous living conditions, etc.

- (b) The area in question was not chosen by the Second Respondent. The First Respondent, Town of North Hempstead, and its Planning Board, keeping in mind the criteria set forth by the Department of Housing and Urban Development, have established a policy of encouraging construction, re-construction and re-development of subsidized housing in the Town of North Hempstead. Thus, the sites are chosen by the First Respondent, but only after comprehensive studies to determine that any site will comply, basically, with the prerequisites set forth by the Third Respondent, to wit: That housing must be built to re-integrate the area and not just for low income families; that when you tear down housing you must re-build on a one to one basis; that while you are re-developing an area you must provide opportunities outside of the area on a freedom of choice basis. Obviously, some people will stay and some will move out of the area. The Town passed resolutions to this affect on April 14 and May 13, 1971 and a copy of same are annexed hereto and made a part hereof and marked "EXHIBITS 2A and 2B".
- (c) The First Respondent proceeded to implement these resolutions by encouraging the following projects:
- i) An E.O.C. group in Port Washington formed the Cow Bay Housing Corp., and received tax abatements and other assistance from the Town of North Hempstead and constructed 98 units of moderate income family units which were completed in 1973, units erected outside the areas of racial concentration.

(ii) The Town of North Hempstead gave tax abatements and otherwise encouraged a Senior Citizens Corporation to build 110 units of housing, under a N. Y. State Program in New Hyde Park; also outside the area of racial concentration.

(iii) The Town of North Hempstead Housing

Authority selected a site in Great Neck on Watermill Road for

the construction of 72 units of low income housing. This pro
posal was submitted to the Department of Housing and Urban

its

Development and/approval is necessary before the project can be

started; \*this site is outside the area of racial concentration.

(iv) The Town of North Hempstead Housing Authority constructed a Senior Citizen Housing in an area adjacent to the area to be re-developed herein. This area, also known as Spinney Hill, was predominantly black and yet the Senior Citizen Complex has produced a population of 60% black and 40% white.

It can thus be seen that the First Respondent has indeed encouraged a policy of developing housing throughout the Town of North Hempstead in areas that certainly could not be called "areas of racial concentration". I submit that the residents—of Spinney Hill do have a choice of housing throughout the Town of North Hempstead and to prevent the re-development of Spinney Hill would amount to our "giving up" on ever improving the blight in the area contrary to the wishes and desires of the residents who desperately want and need this re-development project.

- (d) May I respectfully point out to the Court that the Spinney Hill project would contain 20% of low income residents with rent supplements and 80% of middle income residents who will pay approximately \$55.00 per room.
- 6.) It is interesting to note that our experience, thus far, has indicated a substantial number of inquiries for the Spinney Hill Complex has come from white individuals.
- refers to the North Hempstead Town Board Hearing which took place on June 13, 1972. At this meeting and at a meeting of the North Hempstead Planning Board which took place on May 10, 1972, the overwheming majority of people and organizations spoke in favor of the Spinney Hill project. These included the NAACP, Manhasset Inter-Faith Council, Manhasset-Great Neck E.O.C., League of Women Voters of Manhasset, Great Neck Chamber of Commerce, Great Neck Community for Human Rights, etc. Very few individuals spoke against the project. In fact, most of the Petitioners were in favor of same. This hearing was preceded by many other meetings with every conceivable group in the community over a substantial period of time.
- 8.) The Petitioner states that no alternate site was recommended. In light of the foregoing and particularly paragraph 5 herein, this contention is completely without foundation in fact and is baseless.
- 9.) The Petitioner states that the project would raise taxes. This, despite the fact that the hearings estab-lished that 35 new families would be brought into the area with

no discernable effect on the school system (11% black) nor the tax base.

- 10.) Upon information and belief, the Petitioners did not ask for nor request a hearing before the Third Respondent as mandated by law. I submit that this failure to "exhaust administrative remedies" is sufficient grounds for dismissal of the Petitioners complaint and denial of the instant application.
- 11.) This action is being brought on more than one year after the aforesaid hearing before the North Hempstead Town Board and approval of the resolutions hereinbefore recited. This would certainly also mandate a dismissal of the complaint since the action is not timely made.
- Court that the Great Neck Committee for Human Rights and the NAACP have provided approximately 50 units of housing outside areas of racial concentration. In addition, within the Great Neck Area, within the past two years, the number of minority persons living in housing and apartment units outside the areas of racial concentration has increased from approximately .65 families to approximately 40 homeowners and approximately 85 families in apartments.
- 13.) That the Second Respondent does herewith join with the First Respondent in its Motion for Summary Judgment herein.

WHEREFORE, deponent respectfully requests that the Petitioners application be denied in all respects.

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NOTARY PUBLIC, STATE OF NEW YORK

No. 30-07/38-0 - C Ought of days to Employes t, 1973 Community taptes to a special community to the state of the state o ECTOR H CAVLE

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### EXHIBIT 1a

July 26, 1973

Trban Renewal Agency Roslyn Road Roslyn Hts., New York 11577

Attention: Mr. Hector Gayle

Dear Sir:

We, the undersigned, hereby declare that we have not given consent to anyone to use our names in protest of the Town of North Hempstead Urban Renewal Project that is to take place in the Spinney Hill area.

Respectfully submitted,

Elles & Harry Solland A.

Milita 16 12 1 Warned Carlos

cc: Supervisor Tully
Town Hall

William Jones, President Great Nock Manor Civic Assoc.

### EXHIBIT 1b

July 26, 1973

TO WHOM IT MAY CONCERN:

I, Alberta Johnson, have given no one my signature or permission to enter this suit against Urban Renewal. I was one of the persons who fought hard for it. I believe we need Urban Renewal on Spinney Hill because of the overcrowding. Most people have roomers in their homes and that should not be. These people need homes of their own. I have my son living with me who has just served one year in Viet Nam and 18 months in Germany, and he has no place to go. His furniture is stored in my garage and patio. How could I vote against Urban Renewal? There are people living in basements; they have to have homes. I am in favor of it and have not given anyone permission to use my name against Urban Renewal.

I am a member of the Civic Association and live at 93 Grandview Avenue, Great Neck, N. Y.

Alberta Johnson

## EXHIBIT 1c

Thomas J. Holmes 107 UPALL DRIVE GREAT NECK MEN YORK H./ 7-6418

August 2nd, 1973

To Whom it May Jencern;

This is calrify that I never ave anvone permission to use my name in the suit of Urban Development in any form as Plaintiff or Defender. And have no plans to do so .

Respectfully
Thomas T. Holmes
Thomas T. Holmes

Councilman Davanzo offered the following resolution and moved its adoption, which resolution was declared adopted after a poll of the members of this Board:

RESOLUTION NO. 297 - 1971

A RESOLUTION EXPRESSING THE INTENT OF THE TOWN BOARD TO PROVIDE SUBSIDIZED HOUSING THROUGHOUT THE TOWN OF NORTH HEMPSTEAD.

WHEREAS, the Town of North Hempstead recognizes the housing crisis existing throughout the nation; and

WHEREAS, the Town of North Hempstead is concerned with the health, welfare, and safety of all citizens of the Town and particularly those with incomes considered to be marginal in this inflationary period; and

WHEREAS, the Town wishes to provide equal housing opportunity for all its citizens,

NOW, THEREFORE, BE IT

RESOLVED that the Town of North Hempstead by this resolution hereby expresses its intent to encourage construction of subsidized housing outside areas of containment for those citizens so qualifying in order to promote freedom of choice and to avert ghettoization.

Dated: Manhasset, New York May 13, 1971

The vote on the foregoing resolution was recorded as follows:

AYES: Councilmen DaVanzo, Martin and Weinstein and Supervisor Tully

NAYS: None.

### Exhibit 2b

Connection Weinstein offered the following resolution and moved its adoption, which resolution was declared adopted after a poll of the members of this Board:

RESOLUTION NO. 369 - 1971

A RESOLUTION AMENDING RESOLUTION NO. 297-1971 ENTITLED "A RESOLUTION EXPRESSING THE INTENT OF THE TOWN BOARD TO PROVIDE SUBSIDIZED HOUSING THROUGHOUT THE TOWN OF NORTH HEMPSTEAD."

WHEREAS, the Town Board of the Town of North Hempstead did at a meeting of said Board on May 13, 1971 adopt a resolution stating its posison subsidized housing in the Town; and

WHEREAS, the Town Board is desirous of further clarifying said position,

NOW, THEREFORE, BE IT

RESOLVED that the Town Board hereby amends Resolution No. 297-1971 entitled "A Resolution Expressing the Intent of the Town Board to Provide Subsidized Housing Throughout the Town of North Hempstead" by adding the following statement:

The Town agrees to utilize all resources available to encourage construction of low and moderate income housing outside areas of racial concentration for residents of all races and economic mixes, as well as apply for Section 741B or Open Land Exception Programs if necessary and in accordance with the housing projection of the Nassau-Suffolk Regional Planning Board communication dated April 14, 1971.

and be it further

RESOLVED that except as herein amended, said resolution shall continue in full force and effect.

Dated: Manhasset, New York June 15, 1971

The vote on the foregoing resolution was recorded as follows:

Ayes: Councilmen DaVanzo, Martin and Weinstein and Supervisor Tully

Nays: Nono.

We, the residents of the deprived and dilapidated community of Spinney Hill, reaffirm our position that the area designated as the Urban Renewal site is in urgent need of redevelopment so as to provide decent, safe and sanitary housing for all the residents of this community. The area has been neglected consistently and the requests of the people go unheeded.

The need for improvement has never been greater and we see this as one of the worst areas in the State of New York. We now once again petition the Federal authorities to take swift and positive action in approving the Application of the Town of North Hempstead Urban Renewal Agency for the redevelopment of this area.

The Undersigned:

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The need for improvement has never been greater and we see this as one of the worst areas in the State of New York. We now once again petition the Federal authorities to take swift and positive action in approving the Application of the Town of North Hempstead Urban Renewal Agency for the redevelopment of this area.

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The need for improvement has never been greater and we see this as one of the worst areas in the State of New York. We now once again petition the Federal authorities to take swift and positive action in approving the Application of the Town of North Hempstead Urban Renewal Agency for the redevelopment of this area.

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### PETITION TO THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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#### PETITION TO THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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## PETITION TO THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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#### PETITION TO THE DEPARTMENT OF HOUSING AND JRBAN DEVELOPMENT

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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF: WILLIAM JONES, et al.

AFFIDAVIT

Civil Action

73C 1104

-against-

ROBERT C. MEADE, et al.

Respondent

Petitioner.

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STATE OF NEW YORK )
DISTRICT OF NEW YORK)
ss:

CERALD V. CRUISE, being duly sworn, deposes and says:

- 1. I am the Program Manager for Sub-Area 2 of the New York Area Office of the United States Department of Housing and Urban Development (herein after "HUD"). Inpart, this area encompasses Long Island, and in particular the Town of North Hempstead. I am the general supervisor of our field staff, and in that capacity I have reviewed and I am familiar with the Spinney Mill Meighborhood Development Program (hereinafter "NDP").
- 2. The Spinney Hill housing site consisting of 100 low and moderate income proposed to be apartments/funded under the New York State Mitchell-Lama program, is situated in part of the Spinney Hill NDP project site and said NDP is being developed by the North Hempstead Urban Renewal Agency (hereinafter "LPA"). The LPA prepared an NDP application which was submitted on April 17, 1972 to HUD and reviewed by a HUD field team, consisting of a field representative, engineer, urban planner, appraiser, equal opportunity specialist and numerous other HUD personnel. My recommendations of approval were later concurred in by the Acting HUD Director of Operations.

- 3. Pursuant to the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 d-1, and Title VIIIof the Civil Rights Act of 1968, 42 USC \$601, et seq., HUD has promulgated the Neighborhood Development Program Project Selection System, 24 C.F.R. Part 511, a copy of which is annexed hereto as Exhibit A. The regulation provides an institutionalized method by which HUD might make an informed decision on the effect of approving an NDP application on the racial or minority concentration within the locality requesting federal assistance.
- 4. In accordance with the provisions of 24 C.F.R. Part 511, the NDP application was reviewed and rated by my staffand HUD's Equal Opportunity Section, as to compliance with the Housing Act of 1949, as amended, and the Civil Rights Acts of 1964 and 1968. The Spinney Hill NDP was given an "adequate" rating by HUD as to whether there has been a significant expansion of the supply of standard housing for low and moderate income families in a non-discriminatory way. HUD gave it a "good" rating as to whether the locality had a realistic plan to expand the supply of such housing outside areas of minority concentration. The application was subsequently thoroughly reviewed both technically and legally by HUD and the Spinney Hill NDP was approved by HUD on September 15, 1972. Furthermore, the Spinney Hill NDP was found to meet all the prerequisites of 24 C.F.R. Part 511.
- 5. All funding for NDP's is done annually, on a one year fiscal basis, known as an "action Year', with applications for funding for each consecutive action year having to be reviewed and approved by HUD (42 USC 1469a (a)(1), 1469c (b). The Spinney Hill NDP was funded by HUD for the first action year commencing July 1, 1972 and terminating June 30, 1973.
- 6. HUD approved the overall Spinney Hill NDP and, inter alia, has agreed to pay the cost of acquiring the land for the housing site in question, but given the limited nature of HUD participation in an NDP, HUD does not review and approve the particular structures being built, but HUD does review and approve the general land use. HUD has no financial interest in the housing development being constructed within the Man, which housing development will be financed by the State of New York under its Mitchell-Lama program, if approved.

- 7. A condition precedent to HUD funding of an NDP is that a Workable Program for Community Improvement must be certified by HUD (42 USC 1451 (c), 1469 (a) (1)). In order for the Town of North Hempstead to secure a recertification of its initial Workable Program, HUD had required that the Town make efforts to secure alternate sites for low-rent housing outside areas of minority concentration before it approved the first action year Spinney Hill NDP. To this effect, the Town has submitted, clear and convincing evidence showing that it would construct housing outside of areas of minority racial concentration. (Exhibit \$ attached hereto.) The Town of North Hempstead Housing Authority has received several proposals for the construction of low-rent housing on sites which are not in areas of minority concentration. The Cuttermill Road site, providing 72 low-rent family apartments, has been approved by the Housing Authority and is located in a predominantly white area of North Hempstead. This site is currently undergoing technical review by HUD. Another site which has been approved and is outside areas of minority concentration is the Port Washington Boulevard site that will provide 28 low-rent apartments.
- 8. The Spinney Hill NDP was approved by HUD even though it is located within an area of racial concentration. The basis for our approval was the commitment of the Town to construct low-rent housing outside the NDP racially concentrated area. The annexed resolution of the Town, (Exhibit B) the Cuttermill Road and Port Washington Boulevard projects are all evidence of the Town's efforts to fulfill its commitment to low and moderate income housing on a town-wide into rated basis. The Spinney Hill NDP was approved as part of an overall proposal that included additional housing to be constructed outside areas of minority concentration. On information and belief it was taken into consideration that children who would be residing in the Spinney Hill housing site would be attending integrated schools.
- 9. On information and belief, 150 households consisting of 131 black and 19 white families, and/or individuals, will be displaced by the Spinney Hill NDP. The housing site in question will consist of 100 apartments in addition to the 72 planned at the Cuttermill Road site, and the 28 at the Port Washington Boulevard site, both of the latter sites being outside the Spinney Hill NDP.

This will result in the construction of low and moderate income housing on an integrated basis throughout the Town.

10. On information and belief, the vacancy rate for rental apartments in the Town on North Hempstead is 2.2% and this very low percentage which is prevalent throughout Nassau County is indicative of the vital need for low and moderate income housing which shortage will be somewhat alleviated by the construction of housing on the site in question.

11. HUD in effectuating the provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 d-1, has promulgated an administrative complaint procedure. 24 C.F.R. Sections 1.7 et seq. Pursuant to Section 1.7 (b) of this procedure, "any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part 1 may ... file with the (Department of HUD) a written complaint." Upon information formal and belief no such/complaint has been filed by any of the plaintiffs.

12. HUD is aware of the considerable minority community support for the Spinney Hill housing development. The first year NDP application contains a statement of "citizen involvement," which indicates that several community organizations in North Hempstead such as the Great Neck Coalition for Better Housing, whose membership is black, the Economic Opportunity Council (an HEW sponsored poverty group), and the Mount Olive Baptist Church favor the development. In addition, the file contains a petition signed by 700 local residents who favor the Spinney Hill housing complex. The Interfaith Council of Manhasset, a group of churches, which also supports the project, is providing rent subsidies.

Gerald Cruise

Gerald Cruise Program Manager

Sub-Area 2

New York Area Office

U.S. Department of Housing and Urban Development

Sworn to before me this 24th day of August, 1973

Jane N. La

Notary Public 31-7586850

Qualified in New York County Commission expired March 30, 1975 its adoption, which resolution was declared adopted after a poll of the members of this Board:

## RESOLUTION NO. 297 - 1971

A RESOLUTION EXPRESSING THE INTENT OF THE TOWN BOARD TO PROVIDE SUBSIDIZED HOUSING THROUGHOUT THE TOWN OF NORTH HEMPSTEAD.

WHEREAS, the Town of North Hempstead recognizes the housing erisis existing throughout the nation; and

WHEREAS, the Town of North Hempstead is concerned with the health, welfare, and safety of all citizens of the Town and particularly those, with incomes considered to be marginal in this inflationary period; and

WHEREAS, the Town wishes to provide equal housing opportunity for all its citizens,

NOW, THEREFORE, BE IT

RESOLVED that the Town of North Hempstead by this resolution

hereby expresses its intent to encourage construction of subsidized housing out
side areas of containment for those citizens so qualifying in order to promote

freedom of choice and to avert ghettoization.

Dated: Manhasset, New York
May 13, 1971

The vote on the foregoing resolution was recorded as follows:

AYES: Councilmen DaVenzo, Martin and Weinstein and Supervisor Tully

NAYS: Yore

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

8-9

IN THE MATTER OF THE APPLICATION OF: William Jones, Clarence Brris, et al.,

Petitioners,

- against -

Robert C. Meade, et al.,

Civil Action No. 73 C 1104

Third Respondent.

FEDERAL RESPONDENTS' MEMORANDUM
OF LAW IN OPPOSITION TO PETITIONERS'
MOTION FOR A PRELIMINARY INJUNCTION

ROBERT A. MORSE United States Attorney Eastern District of New York 225 Cadman Plaza East Brooklyn, New York 11201

Harold J. Friedman
Assistant U.S. Attorney
(Of Counsel)

Alphonse Alfano
Assistant General Counsel
U.S. Dept. of Housing and Urban Development

Brian Gunshor Summer Research Assistant

## PRELIMINARY STATEMENT

Plaintiffs, landowners living near the Spinney Hill Neighborhood Development Program (hereinafter "Spinney Hill NDP") area commenced an action on July 24, 1973 against the Town of North Hempstead, the North Hempstead Urban Renewal Agency - the local planning agency (hereinafter "LPA") and the United States Department of Housing and Urban Development (hereinafter "HUD") claiming that a low and moderate income housing site, located within the Spinney Hill NDP area, will perpetuate racial segregation in violation of the United States Constitution and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq.

By order to show cause dated July 27, 1973 plaintiffs now seek a preliminary injunction against the LPA seeking to enjoin the construction of the 100-unit housing site within the Spinney Hill NDP area.

The limited involvement of HUD in approving Federal funds for the acquisition of the site has been accomplished and HUD is not involved in financing the construction of the housing project and this is apparently why plaintiffs do not seek to preliminarily enjoin HUD. Nonetheless, given the vital need for new low

and moderate income housing that HUD is committed to and the need to clarify before this court HUD's involvement in the Spinney Hill NDP project, this memorandum is being submitted. The attached affidavit of Gerald V. Cruise is incorporated herein by reference and will serve as Federal respondents statement of facts.

I. HUD HAS COMPLIED WITH THE LAW AND ITS OWN REGULATIONS IN APPROVING THE SPINNEY HILL NEIGHBORHOOD DEVELOPMENT PROGRAM

It is recognized by all that Federal funds cannot be used to perpetuate racial segregation. In the case in point, HUD has a limited involvement in that it has approved the Spinney Hill NDP plan, which plan is a general outline of land reuse that will elimate urban blight. In accordance with the Spinney Hill NDP plan, HUD has committed funds for the acquisition of land for a site within the Spinney Hill NDP area where the LPA plans to build the housing units in question with State funds. HUD funds will not be used to finance or insure the construction of the housing nor will HUD funds be used for rent supplements. HUD is not required to and HUD has not and will not approve the plans for this housing site.

In Shannon v. United States Department of Housing and Urban Development, 436 F. 2d 809 (3d. Cir. 1970) the court required HUD to develop institutionalized procedures to enable it to make an informed decision as to whether the Federally financed housing that it was approving was in compliance with the Housing Act of 1949 as amended and the Civil Rights Acts of 1964, 42 U.S.C. \$2000d and 1968, 42 U.S.C. \$601.

Pursuant to Shannon, HUD promulgated institutionalized procedures for making an informed decision as to whether it has complied with the Housing Act as amended and the Civil Rights Acts when it approves two types of Federal funding. The first

type concerns situations like <u>Shannon</u>, where there is Federal financial assistance for the actual construction of housing.

37 Fed. Reg. 203-9 (Jan. 7, 1972). (attached hereto) The second type concerns situations such as the case in point where HUD subsidies are limited and HUD only funds the land acquisition costs of an Urban Renewal or NDP projects and where there is no HUD subsidy for the construction of housing. 24 C.F.R., Part 511 (attached hereto).

HUD regulations contained in 24 C.F.R. Part 511 set forth a methodology whereby the approval of applications for NDP funding can be made only after there has been a thorough evaluation of each facet of the locality's NDP plan. If an application contains plans for the eventual construction of low and moderate income housing the application must be examined in light of the potential effect of such housing on the racial concentration of the NDP area.

Pursuant to 24 C.F.R. §511.4 "Program Prerequisites,"

HUD will proceed to evaluate only those applications for NDP

funding which meet the 6 threshold requirements contained in

this subsection, which requirements are mandated by law. The

six threshold requirements relate to: (a) workable programs;

- (b) local general plan; (c) civil rights; (d) relocation;
- (e) OMB (Office of Management and Budget) requirements; and
- (f) housing component.

Subsequent to HUD's determination that the LPA

application for the Spinney Hill NDP project complied in all respects with the six threshold requirements, HUD officials then evaluated the application on the basis of the criteria set forth in 24 C.F.R. 511.6 et seq. Although no Federally subsidized housing is planned for the Spinney Hill Urban Renewal Area, the above-mentioned regulations require HUD to consider the town of North Hempsteads plan to expand the supply of low and moderate income housing in a non-discriminatory way, outside areas of concentration of economically disadvantage minority citizens.

The Spinney Hill NDP was given an "adequate" rating by HUD as to whether there has been a significant expansion of the supply of standard housing for low and moderate income families in a non-discriminatory way and HUD gave it a "good" rating as to whether the locality had a realistic plan to expand the supply of such housing outside areas of minority concentration. The application was subsequently throughly reviewed both technically and legally by HUD and the Spinney Hill NDP was approved by HUD on September 15, 1972 for the first action year (July 1, 1972 to June 30, 1973).

Accordingly, HUD required assurances from the Town of North Hempstead that it would provide comparable low and moderate income housing outside economically disadvantaged or minority impacted areas.

This Resolution is currently in the process of being implemented by the Town of North Hempstead through its selections of the Cuttermill site and the Port Washington Boulevard site.

Moreover, the Town has received a number of proposals submitted by private redevelopers who are interested in developing various housing projects. Assurances were given by the Town of North Hempstead to HUD that in addition to the Spinney Hill housing project, that it would build other low and moderate income housing outside of the Spinney Hill NDP area in non racially impacted areas.

It is clear that although no Federally subsidized will be built in the Spinney Hill NDP area, HUD has required the Town of North Hempstead to balance the Spinney Hill project with comparable housing in a non racially impacted area outside the NDP area with the net effect being a dispersion of low and moderate income housing on an integrated basis throughout the town.

In view of HUD's compliance with its regulations regarding approval of NDP assistance, and the fact that these regulations provide an institutionalized method for making an informed decision on the approval of the Spinney Hill NDP application, HUD has fulfilled all of its responsibilities under the law and its own regulations.

In Crosky Street concerned citizens v. Romney, 335 F. Supp. 1251 (E.D. Pa. 1971) aff'd 459 F. 2d 109 (3rd Cir. 1972) Federally assisted low rent housing for the elderly was planned for Philadelphia. The approved plan consisted of 4 structures being constructed in a predominately black area and one structure being constructed in a predominately white area. The district court found that at the time of the HUD review of the project in 1971 that there were no HUD institutionalized procedures. Nonetheless, the district court held that HUD had considered the substantive issues concerning site selection and racial concentration and that HUD had made an informed decision in approving the sites for the five structures.

Thus, In Crosky Street Concerned Citizens and in the case in point, HUD had assurances from the municipalities that low and moderate income housing would be built outside the racially concentrated areas.

Unlike Shannon and Crosky Street Concerned Citizens

HUD now has institutionalized procedures (24 C.F.R. 511) to assist
in making an informed decision as to whether Federal funds are
being utilized in compliance with the Housing Acts as Amended
and the Civil Rights Acts of 1964 and 1968. It must be
remembered that in the case in point unlike Shannon and

Crosky Street Concerned Citizens that HUD's involvement is
limited to approving an overall general land reuse plan for an
NDP area and that HUD is not financing the construction of a
particular housing structure. The facts clearly demonstrate
that the Spinney Hill NDP project will eliminate urban blight
and that vital housing will be juilt in the Town of North
Hempstead.

"There will be instances where a pressing case may be made for the rebuilding of a racial ghetto. We hold only that the agency's judgment must be an informed one; one which weighs the alternatives and finds that the need for . . . minority housing at the site in question clearly outweighs the disadvantage of increasing or perpetuating racial concentration." Shannon supra, at 822.

## II - PLAINTIFFS: FAILURE TO EXHAUST AVAILABLE ADMINISTRATIVE REMEDIES IS FATAL TO THEIR CLAIM

As a general rule, available administrative remedies must first be exhausted before a Federal court will grant injunctive relief. Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41 (1938). This is especially so where the issue in the case depends on the application of expertise by administrative bodies in resolving underlying issues of fact. McGee v. United States. 402 U.S. 479 (1971).

Where complaints of racial discrimination by recipients of Federal funds arise. in this case the LPA is the recepient, the available administrative remedies are found in the HUD regulations mandated by Title VI of the Civil Rights Act of 1964 and Sec. 203 of Executive Order 11,063, 27 Fed. Reg. 11527, at 24 C.F.R. §§1.7-.11.Section1.7 specifically provides for HUD investigations of specific complaints against anyone receiving Federal funds charged with discriminatory practices contrary to Title VI.

Once a complainant files a complaint with HUD and HUD acts upon it, the complainant has exhausted his administrative remedies. See generally, Note: Racial Discrimination in Public Housing Site Selection, 23 Stanford L. Rev. 63, 73 (1970). It is submitted that only when this procedure has been exhausted may

the complainant seek judicial review of EUD's decision to assist a local governmental agency.

Plaintifis did not allege, nor did they in fact utilize the above described administrative procedure. Nor have plaintiffs in their moving papers, given any reason for failing to exercise and exhaust available administrative remedies.

It is clear that Title VI and Executive Order 11,063 place initial primary responsibility in HUD over claims of discriminatory practices in a Federally assisted NDP such as Spinney Hill by the grant of authority in said Title VI and the Executive Order 11,063, to promulgate regulations and procedures designed to effectuate the goals of providing adequate housing to low and moderate income families, irrespective of race.

HUD was given this primary responsibility because of HUD's specialized expertise in the area of housing and because of the desireability of avoiding premature interruption of the administrative process. See Davis, Administrative Law Treatise \$20.02.

It is submitted, only when (1) available administrative remedies have been exhausted; or, (2) there is no reason for exhaustion due to the obvious inadequacy of the remedy; or (3) where prejudice will result to the claimant may there be judicial review of an administrative determination pursuant to \$10 of the

Administrative Procedure Act, 5 U.S.C. §702.

Plaintiffs' failure to comply, or in the alternative, to show good cause for noncompliance, with the available administrative procedures embodied in 24 C.F.R. §1.7 is fatal to their claim. Myers supra, at 48.

## III - PLAINTIFFS ARE BARRED FROM SEEKING EQUITABLE RELIEF BY THE EQUITABLE DOCTRINE OF LACHES

Although plaintiffs' claim is ostensibly brought in the public interest, plaintiffs are nevertheless barred from the relief that they seek (a preliminary injunction) by laches since they have unreasonably delayed far too long in bringing the present action. If an injunction were to issue, substantial prejudice would result to HUD, the Town, and LPA, and to the general public.

Diligence in pursuit of a purported claim is an essential condition to equitable relief. Abraham v. Ordway, 158 U.S. 416 (1895). Plaintiffs clearly lack the diligence necessary to pursue the relief that they seek in the present action. This point is evidenced by plaintiffs' unreasonable failure to make a seasonable objection pursuant to the prescribed Title VI procedure specified in 24 C.F.R. §1.7, discussed above. after the decision was made by HUD to approve the Spinney Hill NDP.

In addition, plaintiffs have waited since September 15, 1972, the date of the approval of the Spinney Hill NDP project to commence this action and to seek the extraordinary relief of a preliminary injunction. It should be noted that public noti was given and public hearings were held prior to HUD approvation the Spinney Hill NDP project.

In the interim, HUD has made an irrevocable committment to the Spinney Hill NDP which will result in prejudice both to HUD, the Town, the LPA and to the general public should an injunction issue. HUD will be prejudiced if an injunction is granted, due to many intervening factors which came about during the period of close to one year that plaintiffs chose to sit on their purported claim.

Substantial time, effort and expense were committed by HUD in making its determination to approve the Spinney Hill project. Clearly, the critical need for adequate housing for low and moderate income families would be further frustrated.

Although HUD meets the requirements necessary to invoke laches as an affirmative defense, a general exception to the doctrine occurs where a suit is brought in the nature of a public interest claim. 5 Cyclopedia of Federal Procedure §15.621.

As was stated above, although plaintiffs' claim is ostensibly brought in the public interest pursuant to Title VI, in view of HUD's informed decision that the land use for this public housing site will not contribute to racial minority impaction but will in fact have the opposite effect. and in view of the fact that HUD has extracted assurances from the . Town of North Hempstead that it will construct low and moderate

()

income public housing outside the NDP area, it becomes readily apparent, what the true interests of plaintiffs are in the present action. Those interests. it is submitted, do not necessarily spring forth from a desire to see that there is racial integration, but rather from a desire to protect and maintain the property values of their respective real estate holdings which are in close proximity to the proposed low and moderate income housing site in question.\* This fact is clearly evidenced by the overwhelming favor and support given the project by the clear majority of black area residents. The real public interest is in seeing that slum and blighted areas are eradicated and that adequate low and moderate income housing is constructed to alleviate the initial housing shortage. Consequently, plaintiffs' claim is not within the public interest exception to the doctrine of laches but their claim is primarily predicated on their admission in the first paragraph of their petition: "That theirs is an association formed not only to protect the proprietary rights of the individual members", although they add, "but also to endeavor to solve the social problems prevailing in their community."

/\*Such a claim is not cognizable under law. In Welch v. Swasey, 214 U.S. 91 (1909), it was held that a local land use regulation designed to preserve and protect the general health and welfare was properly enacted pursuant to the police power. and did not constitute a "taking" because of consequent diminution of property value of properties subject thereto. See also Fletcher v. Romney, 323 F. Supp 189, 195 (S.D.N.Y. 1971). where the court stated that there is no institutional right to have things remain the same.

# CONCLUSION

It is obvious that Plaintiffs have not demonstrated that there is a substantial likelyhood of prevailing on the merits. In addition, the need for low and moderate income housing clearly outweighs plaintiffs proprietary interests and accordingly a preliminary injunction should not issue.

Respectfully submitted,

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# - Title 24—HOUSING AND URBAN DEVELOPMENT

Chapter II—Office of Assistant Secretary for Housing Production and Mortgage Credit—Federal Housing Commissioner (Federal Housing Administration)

[Docket No. R-71-119]

#### PART 200-INTRODUCTION

Subpart N-Project Selection Criteria

EVALUATION OF RENT SUPPLEMENT PROJ-ECTS AND LOW-RENT HOUSING ASSIST-ANCE APPLICATIONS

The purpose of these regulations is to set forth criteria by which the Department will evaluate applications for funding of housing projects under sections 235(1) and 236 of the National Housing Act, rent supplement projects and low-rent housing assistance applications under the U.S. Housing Act of 1937.

On June 24, 1971 (36 F.R. 12032) the Department first published these criteria for public comment as a notice of proposed rule making. In view of changes made in the criteria as a result of ensuing comments, the Department republished the criteria in revised form for further public comment on October 2, 1971 (36 F.R. 19316). The Department received more than 80 sets of comments after each publication.

The Department has now considered each comment received and publishes these regulations in final form to be effective February 7, 1972. Principal changes and the Department's response to significant comments are set forth below.

Although some comments recommended the use of a two-grade system (acceptable or unacceptable) and others suggested that within each criterion a range of points should be awarded, such as 5, 4, 3, 2, or 1, the Department believes that the three-grade system (superior, adequate, poor) is best. An acceptableunacceptable rating system would not provide an order of priority for funding. On the other hand, a multipoint system is not necessary because the three-grade system gives a sufficiently wide range of priorities, and the assignment of numerical range of point values within each criterion would require drawing impractically fine distinctions with respect to factors which often involve broad judgments.

Some comments objected to the procedure of project-by-project evaluation and to the use of uniform, national standards. In view of the fact that HUD's statutory function is to approve proposals submitted, rather than to prescribe areawide plans, the Department believes that the new evaluation system is appropriate. The criteria are sufficiently general to apply across the country without doing violence to local conditions, while at the same time

establishing national standards to assure equitable treatment of all areas.

Some comments noted that the criteria duplicate in some respects other program feasibility or processing requirements. While this may be true, the purpose of the criteria is to provide at an early time a means of eliminating clearly unacceptable proposals and assigning priorities in funding to assure that the best proposals are funded first. The criteria will thus serve as a screen, relieving HUD's Area and Insuring Offices from performing the detailed processing required by each program on applications which would never be funded.

Several comments questioned possible conflicts among various criteria. For example, as some comments noted, criterion 6, which relates to efficient production, may conflict with criterion 7, which encourages training. Other comments evidenced a related misunderstanding: They seemed to assume that proposals must get a "superior" rating on every criterion. The purpose of the criteria is to take into account a range of project characteristics and weigh them appropriately in relation to broad policy objectives. Some conflicts are unavoidable. Most proposals cannot be expected to satisfy all criteria equally well. but each of the criteria relates to desirable qualities of a proposed project and will be considered by HUD in its evaluation.

Some comments asserted that the project selection criteria will result in too few projects being built in the inner cities, and others asserted that the criteria will result in too many projects being built there. In the same vein, some comments suggested that the criteria emphasized and encouraged one factor too much or too little. The Department has considered such comments, but believes that the present system gives each of the criteria proper weight and achieves a proper balance of countervailing needs and interests.

It was suggested that the term "housing market area," used several times in the criteria, should be defined to coincide with boundaries of local political jurisdictions. It was also suggested that certain parts of housing market areas should be allotted housing funds irrespective of ratings on the criteria. The Department has declined to adopt these suggestions because housing market areas often are independent of arbitrary political boundaries and allotments to certain parts of those areas could result in the Department's approving projects which would be less than the best that could be created for the people of each housing market area.

Some comments misconstrued the purpose of the project selection criteria as being confined to site selection. In its decision to fund or not to fund a project, the Department believes that it should take into consideration other factors in addition to proposed location of the housing.

A number of civil rights organizations objected that the instructions fail to

provide an explicit role for Equal Opportunity officials in evaluation of applications. First, these regulations are not delegations of authority, and therefore are not a proper vehicle for designating which HUD official will evaluate the criteria. Moreover, HUD Equal Opportunity personnel already advise field processing staff on matters of racially impacted areas and other equal opportunity matters which need to be considered in processing bousing proposals. The responsibility for evaluating and processing applications is assigned to the Assistant Secretary for Housing Production and Mortgage Credit (HPMC), and under his direction to processing staff in the HUD Field Offices. Other comments also related to internal and administrative procedures of the Department. The Department believes that how the criteria are implemented and processed within the Department is not properly part of the criteria themselves.

The NAACP and others questioned the fact that one "poor" rating can veto an otherwise worthwhile housing proposal. The evaluation system limits the criteria to those elements considered to be important or essential to a desirable proposal. The Department believes that it is appropriate to require a proposal rate at least "adequate" on all criteria in order to receive funding.

Several comments requested definitions of technical terms. The Department believes that definitions of such terms are not necessary, at least at this time.

There were several comments which suggested special treatment for proposals in which the commenter had a high degree of interest. The Department feels that such special and automatic ratings for proposals are not necessary or wise. If a proposal meets the general language of a "superior" rating, it will receive a "superior" without overburdening the criteria with lists of special cases and without danger of rating as "superior" projects which do not deserve it.

Criterion 9, Homeownership, which appeared on the public housing form in the June 24 version has been deleted in response to comments from local housing authorities that the requirement would limit their choice and discriminate against the more typical nonhomeownership low-rent housing programs as opposed to public housing homeownership programs. Groups active in the cooperative housing field suggested that the former criterion 9 for public housing proposals be required also for section 236 evaluation. Because the Department is carrying on a broad effort through all subsidized programs to promote homeownership opportunities for lower income families, it is not necessary to use these criteria as a vehicle for encouraging homeownership.

Some urged that the criteria will impose new and great administrative burdens on applicants, working to the detriment of all, but particularly the smaller or less experienced ones. The Department does not anticipate that the burden

will be great and is convinced that information of the kind called for by the criteria is necessary to enable the Department to choose the best proposals submitted. Local housing authorities pointed out that sites for public housing generally are not known at the application stage. However, administrative procedures with respect to local housing authority applications will provide for statements of intent to be accepted as to some criteria in the absence of exact knowledge; subsequent approval will depend upon meeting the terms of those statements

Many comments suggested alternative terms, phrases, objectives, and criteria. The Department has adopted those which are appropriate to the regulations and improve the clarity and precision of the criteria.

The regulations now combine the form and the instructions of the previous two versions into a single format. The principal changes and comments with respect to each criterion are summarized below.

Criterion No. 1, Need for Low(er) Income Housing. In response to suggestions for improved clarity over the June version, the instructions now specify the concept of need in terms of number of rooms and structure type. The instructions omit, as unnecessary, references in the October version to specific markets (such as large families and the elderly) because consideration of these factors is included in the broad language of the criterion. The "poor" rating of the October version has been rephrased to eliminate reference to vacancy rates and to sdd a reference to "comparably priced, standard unsubsidized housing." Several of the comments, such as the one received from the U.S. Civil Rights Commission, pointed out that overall vacancy rates may not be an accurate reflection of ability to satisfy lower income housing needs. As suggested by NAHRO, the "superior" rating now contains the phrase "as a relocation resource" to clarify the connection between housing need and provision of housing for displacees.

Although some comments suggested that the criterion should be more specific with respect to defining housing market areas, measuring elements of housing need, or describing degrees of need, the Department believes that the criterion is now sufficiently clear. Greater detail as needed is contained in HUD market analysis and similar guidelines and is not appropriate for these regulations.

Criterion No. 2, Minority Housing Opportunities. This criterion has been rephrased to clearly distinguish between three kinds of areas: (1) Areas of minority concentration, (2) substantially racially mixed areas, and (3) areas which are outside of (1) and (2).

A phrase has been added which permits building in areas of minority concentration if there exist "sufficient, comparable opportunities • • • for housing for minority families, in the income range to be served by the proposed project, outside areas of minority con-

centration." This is designed to assure that building in minority areas goes forward only after there truly exist housing opportunities for minorities elsewhere. The phrase "sufficient, comparable op-portunities" is designed to assure that the housing available to minorities outside areas of minority concentration is more than a token amount of so few units that there is in fact no true opportunity. At the same time the phrase is not tied to any rigid formula.

The provision for building inside areas of minority concentration if prospective residents of the project or residents of the project area express a desire for it has been stricken and will not be used. The Department is convinced that such a provision is unworkable and would have been abused, as comments, such as that of the League of Women Voters, suggested. Other examples of overriding need which cannot be feasibly met elsewhere were merely explanatory and not necessary to the regulations. For similar reasons, the phrase "on the basis of factors such as existing demographic trends" was removed.

Housing proposed to be built in substantially racially mixed areas has been omitted from the alternatives of the 'superior' rating. Although building in such areas is now permitted under "adequate" where the proposed project will not cause the proportion of minority to nonminority residents to increase significantly, the Department deems it undesirable to encourage projects in those areas by giving them "superior" ratings because such projects in the large numbers a high rating could generate might contribute to a stable racially mixed area's becoming one of minority concentration.

The alternative under "superior" in the October version which referred specifically to Urban Renewal and Model Cities areas was removed because many such areas could not be expected to serve a wide range of income levels and a racially varied population. The phrase "in or near an area of minority concentration" has been shortened throughout to "in an area of minority concentration." Avoidance of adverse impact on transitional areas is addressed elsewhere in the criterion.

An additional provision (4) was added to "adequate" to accommodate housing market areas in which there is little or no minority population. Documentation requirements have been extended to all "superior" and "adequate" ratings.

Criterion 3, Improved Location for Low(er) Income Families. The phrase 'similar market value" is substituted throughout for "similar price range," used in the October version of this criterion, and the phrase "unsubsidized housing" has been clarified to "standard unsubsidized housing." These revisions are intended to make clear that in considering a proposed site, HUD will compare facilities and services in the neighborhood surrounding the site with facilities and services in other neighborhoods which are made up of standard, unsubsidized housing similar in market value

to the housing in the neighborhood of the proposed project.

Other changes include redefinition of the word "section," from "the project neighborhood and surrounding neighborhoods" to "the project neighborhood and contiguous neighborhoods." Under the former definition a "section" could be construed as so large that it would have defeated the purposes of the criterion. The qualifier "federally" was added to 'subsidized housing" so that middleincome subsidized housing (such as that constructed under New York's Mitchell-Lama program) would not be considered as contributing to a concentration of subsidized units. The term "in the near future" has been replaced with "by the occupancy date or very shortly thereafter" to provide a time frame for provision of services and facilities to the neighborhood.

In the "adequate" rating as it appeared in October, "a significant amount of" has been deleted as a modifier of "subsidized housing." The basic consideration is whether the section will be dominated by subsidized housing after completion of the proposed project; the quantity of subsidized housing before the addition of the project is not necessarily the determining factor. The revision makes clear the policy of the criterion that an undeveloped area or one containing little subsidized housing must not be overwhelmed by new subsidized housing.

The regulations continue to base determinations under this criterion on "subsidized" housing, rather than adopting suggestions that the criterion be based on avoiding concentrations of housing for low-income or lower income families. References to Urban Renewal and Model Cities programs have been moved from "superior" to "adequate," as housing in such areas is frequently not up to the standards of a "superior" for this criterion. Nevertheless, if a proposal in an Urban Renewal or Model Cities Area meets the general standards of "superior," such a rating will be given.

Criterion 4, Relationship to Orderly Growth and Development. Although there are many areas without plans which will met this criterion, and the Department will not itself develop such plans, as comments suggested, the Department hopes this criterion will encourage their adoption. The statement of objectives and the "superior" rating specify that acceptable planning should contain a housing element, as suggested by the U.S. Civil Rights Commission and others. However, other comments regarding what details a plan should contain and how it should be adopted have not been incorporated into the criterion as it is thought best to leave such matters up to each planning agency.

To dispel some confusion the "superior" instructions add a parenthetical statement that "zoning alone does not constitute an officially approved land use or other development plan." A "superior" rating now specifically recognizes a planning policy for dispersal of subsidized housing adopted by a State housing or

metropolitan areawide development agency, in addition to plans of a local agency. The provision under "adequate" concerning the absence of, or inconsistency with, metropolitan or regional plans was removed because it was contradictory to the objectives of this criterion.

Criterion 5, Relationship of Proposed Project to Physical Environment. In order to remove any ambiguity in the June version and to relate this criterion to considerations of the National Environmental Policy Act, the revised criterion focuses upon the physical aspects of project design and location and is now a required criterion, as requested by the Chairman of the Council on Environmental Quality.

The treatment of ecological considerations in the instructions for "superior" has been revised in accordance with suggestions from the Environmental Protection Agency and others. The revision. inter alia, makes clear that evaluation of environmental impact must take into account both long-term and short-term effects of the proposed project. The Department has decided not to include several suggestions for addition of specific terms because the added materials are encompassed within other criteria or are already part of feasibility requirements which must be met in later processing. Criterion 6, Ability to Perform. For

clarity, this criterion is revised slightly over the October version. The most important change is use of the phrase "each of the following" which removes difficulty regarding how to rate an efficient contractor who ignores Equal Opportunity guidelines and requirements.

Some comments urged that this criterion will be too harsh on minority or non**profit sponsors**. However, the Department considers the present language is sufficiently lenient without making the criterion meaningless. To achieve national housing goals, ability to perform must be consideration.

Criterion 7, Project Potential for Creting Minority Employment and Busisess Opportunities. Comments objected that the June version would have hindered minority firms and workers residng in the inner city some distance from proposed locations. For this reason, the riterion no longer refers to lower-income

persons or project area. The requirements for utilizing business concerns in the "superior" instrucions adds to the October version the parenthetical phrase "including but not imited to the prime contractor" to asture that a whole range of minority enerprises, not just the general construction contractor, should have access to ousiness opportunities created by a project. In response to comments by the National Committee Against Discriminaion in Housing, the instructions for a 'poor" rating have been revised by subtituting "could feasibly" for "would customarily." The intent is to assure that no possible source of minority labor or pusiness skills is overlooked. For purposes of consistency, this clause was moved up to "adequate."

Criterion 8, Provision for Sound Housng Management. This criterion has been revised to distinguish between proposals for low-rent public housing on the one hand and 236 and rent supplement projects on the other, and to make the criterion generally more concise. Details of management requirements have not been included in the criteria, as some suggested, for they are too lengthy.

Pursuant to the National Environmental Policy Act of 1969 (Public Law 91-190) and the guidelines of the Council on Environmental Quality of April 23, 1971 (36 F.R. 7724), a document entitled "Final Environmental Statement on Proposed HUD Project Selection Criteria for Subsidized Housing" is being placed in the following locations where it will be available for inspection by members of the public: Program Information Division, Room 1202, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, and in Information Centers of the HUD Regional Offices. Single copies of the statement may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

Accordingly, Title 24 is amended by adding to Part 200 as follows:

#### Subpart N-Project Selection Criteria

200. 700 Purpose.

200.705 Authority.

200.710 Requests for priority registration, early feasibility, or reservation of contract authority for section 235(1), rent supplement, or sec-

tion 236 projects and evaluation applications for low-rent public housing.

AUTHORITY: The provisions of this Subpart N are issued pursuant to section 7(d) of the Department of Housing and Urban Development Act of 1965 (42 U.S.C. 3535(d)), sections 235(1) and 236 of the National Housing Act (12 U.S.C. 1715z(1) and 1715 -1), and the U.S. Housing Act of 1937 (42 U.S.C. 1401 et seq.).

#### Subpart N-Project Selection Criteria § 200.700 Purpose.

The purpose of this subpart is to set forth the project selection criteria to be used in evaluating (a) requests for priority registration and reservation of contract authority for projects under section 235(i) of the National Housing Act; (b) requests for early feasibility and reservation of contract authority for projects under section 236 of the Act; (c) requests for reservation of contract authority for rent supplement projects; and (d) applications for low-rent housing assistance under the U.S. Housing Act of 1937.

#### § 200.705 Authority.

The regulations in this subpart are issued pursuant to section 7(d) of the Department of Housing and Urban Development Act of 1965, 42 U.S.C. 3535(d), sections 235(i) and 236 of the National Housing Act (12 U.S.C. 1715z(i) and 1715z-1); and the U.S. Housing Act of 1937 (42 U.S.C. 1401 et seq.). They implement Executive Order 11063, 27 F.R. 11527; title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3608; and the Department of Housing and Urban Development regulations approved by the President under title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1, in Part 1 of this title.

- § 200.710 Requests for priority registration, early feasibility, or reservation of contract authority for section 235 (i), rent supplement, or section 236 projects and evaluation of applications for low-rent public housing.
- A request for priority registration, early feasibility, or reservation of contract authority for section 235(i), rent supplement, or section 236 projects and applications for low-rent public housing shall be evaluated and processed in accordance with the following Evaluation of Requests:

#### U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FEDERAL HOUSING ADMINISTRATION

Evaluation of requests for priority registration, early feasibility, reservation of contract authority (section 235(i), rent supplement, section 236) or evaluation of application for low-rent public housing.

☐ 235(i) ☐ 221d3 rent supplement ☐ low-rent public housing ☐ 236 ☐ rent supplement
Sponsorship: Profit Nonprofit Lim. Div. Public
☐ Priority registration ☐ Early feasibility ☐ Reservation ☐ App. public housing
Area or insuring office
Applicant (name and address)
Census tract (where available)
Date of initial application
Identification of subdivision/location of proposed project
Case or application number.

General instructions: In evaluating proposals involving five (5) or more dwelling units (25 or more in the case of public housing acquisition or leasing), the Area or Insuring Office shall utilize the following Project Selection Criteria. Enter a brief explanation on the lines provided of the way in which the proposal satisfies each applicable consideration, so that the factual basis for the evaluation and rating assigned is clear. Attach supporting documentation and extra sheet(s), if necessary for a complete explanation. Evaluate each criterion by checking the appropriate box—Superior, Adequate, or Poor.

Final feasibility approval is dependent upon satisfying all statutory and administrative requirements which are a normal part of processing. Rehabilitation projects, Indian Reservation Housing, section 235 existing housing, public housing acquisition or leasing of existing housing of fewer than 25 units not requiring rehabilitation, and proposed construction project of fewer than five (5) dwelling units are excluded.

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1. Need for low(er)

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1. Need for low(er) income housing  Buperior  Adequate  Poor  Objective: To identify the proposed projects which will best serve the most urgent unmet  needs for housing for low(er) income households.  (A) A superior rating shall be given to a proposed project:  (1) Which responds well to the most urgent housing needs of low(er) income households  in the market area in terms of number of bedrooms and structure type; or,	outside areas of minority concentration; or,
(2) As to which there is documented evidence that the housing is needed as a relocation resource to serve families displaced or to be displaced by governmental action, including families or individuals being displaced by the proposed project, and that the applicant will give preference to those so displaced	(3) In an area of minority concentration, but is necessary to meet overriding housing needs which cannot otherwise feasibly be met in that housing market area. (An "overriding need" may not serve as the basis for an "adequate" rating if the only reason the need cannot otherwise feasibly be met is that discrimination on the basis of race, color or national origin renders sites outside areas of minority concentration unavailable); or,
(B) An adequate rating shall be given to a proposed project which responds to housing needs of low(er) income households in the market area in terms of number of bedrooms and structure type	(4) In a housing market area with few or no minority group residents.
(C) A poor rating shall be given to a proposed project which:  (1) Does not respond to housing needs of low(er) income households in the market area; or,	All "superior" and "adequate" ratings shall be accompanied by documented findings based upon relevant racial, socioeconomic, and other data and information.  (C) A poor rating shall be given if the proposed project does not satisfy any of the above conditions, e.g., will cause a significant increase in the proportion of minority residents in an area which is not one of minority concentration, but which is racially mixed.
(2) Duplicates or competes unreasonably with other subsidized or comparably-priced, standard unsubsidized housing projects in the same locality in such a way as to overbuild the market	3. Improved location for low(er) income families   Buperior   Adequate   Poor
2. Minority Housing opportunities  Buperior Adequate Poor Objectives:  To provide minority families with opportunities for housing in a wide range of locations. To open up nonsegregated housing opportunities that will contribute to decreasing the effects of past housing discrimination.  (A) A superior rating shall be given if the proposed project will be located:  (1) So that, within the housing market area, it will provide opportunities for minorities or housing outside existing areas of minority concentration.	To avoid concentrating subsidized housing in any one section of a metropolitan area or town.  To provide low(er) income households with opportunities for housing in a wide range of locations.  To locate subsidized housing in sections containing facilities and services that are typical of those found in neighborhoods consisting largely of standard, unsubsidized housing of a similar market value.  To locate subsidized housing in areas reasonably accessible to job opportunities.  (A) A superior rating shall be given if the proposed project:
(3) In an area of minority concentration, but the area is part of an official State or local gency development plan, and sufficient, comparable opportunities exist for housing for ninority families, in the income range to be served by the proposed project, outside areas is minority concentration	(1) Will be located in a section (consisting of the project neighborhood and contiguous neighborhoods) that contains little or no federally-subsidized housing and (a) the proposed project is, or will be by the occupancy date or very shortly thereafter, accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal services that are equivalent to or better than those typically found in neighborhoods consisting largely of standard, unsubsidized housing of a similar market value, and (b) travel time and cost via public transportation or private auto from the neighborhood to employment providing a range of jobs for low(er) income workers is considered excellent for such families in the metropolitan area or town. (While it is important that elderly housing not be totally isolated from all employment opportunities, for such projects the requirements of (b) above need not be adhered to rigidly); or,
(B) An adequate rating shall be given if the proposed project will be located:  (1) Outside an area of minority concentration, but the area is racially mired, and the roposed project will not cause a significant increase in the proportion of minority to comminority residents in the area; or,	(2) Is part of a New Community Development Plan approved under Title VII of the Housing and Urban Development Act of 1970

	•
(B) An adequate rating shall be given to a proposed project which will be located:  (1) In a section already containing federally substitute.	
(1) In a section already containing federally-subsidized housing if, with the addition of the proposed housing, the resulting number of federally-subsidized housing if, with the addition of the proposed housing if the resulting number of federally-subsidized housing if the containing if the containing if the containing it is not contained by the containing it is not conta	4. Relationship to orderly growth and development   Superior   Adequate   Poor
the proposed housing, the resulting number of federally-subsidized housing if, with the addition of the character of the section as one of subsidized housing units will not establish	of Objectives: Buperior Adequate Poor
the character of the section as one of subsidized housing and the housing will not establish expanded range of housing opportunity for low (st.) the constant will provide an	
expanded range of housing opportunity for low(er) income families; or,	and development.
or,	TO Drevent surham amount
	before supporting facilities are available.
	To develop housing consistent with a state
(2) In an undeveloped area, but the scale of the project will not be	
(2) In an undeveloped area, but the scale of the project will not be such that it establishes the character of the section as one of subsidized bouston.	
the character of the section as one of subsidized housing;	throughout a metropolitan area
as one of squaidized nousing;	(A) A superior rating shall be given if the property
(3) And, in the event of either (1) or (2): (a) The protect is	alone does not constitute an effectable
(3) And, in the event of either (1) or (2): (a) The project is, or will be by the occupancy late or very shortly thereafter, accessible to social reconstruction.	and dee of other development plan); or
ate or very shortly thereafter, accessible to social recreational, educational, commercial, and health facilities and services, and other municipal control and services.	
nd health facilities and services, and other municipal services that are equivalent to those spically found in neighborhoods consisting largely of uncertainty.	***************************************
pically found in neighborhoods consisting largely of unsubsidized standard housing of a milar market value, and (b) traveitime and cost via public terral standard housing of a	
miliar market value, and (b) traveltime and cost via public transportation or private auto om the neighborhood to employment providing a range of the description or private auto	
om the neighborhood to employment providing a range of fobs for low(er) income workers	
reasonable for such families in the metropolitan area or town. (While it is important that	improvement via Urban Renewal, Model Cities, New Communities or other similar Federal, State, or local development programs: or
derly housing not be totally isolated from all employment opportunities, for such projects requirements of (b) above need not be adhered to statistics.	State, or local development programs; or,
e requirements of (b) above need not be adhered to rigidly); or,	or,
of (b) above need not be adhered to rigidly); or,	
	(3) Is consistent with a policy adopted by a final consistent with a final
(4) In an Urban Renewal or Model Cities area and such hand	(3) Is consistent with a policy adopted by a State housing or metropolitan areawide development agency or the local governing body (especially as a state housing or metropolitan areawide)
(4) In an Urban Renewal or Model Cities area and such housing is required to fulfill, spectively, the Urban Renewal Plan or the Comprehensia City of the Urban Renewal Plan or the Urban Renewal P	development agency or the local governing body (especially where this policy implements moderate income for local) for providing for and dispersing housing for low and
spectively, the Urban Renewal Plan or the Comprehensive Claim is required to fulfill,	a multijurisdictional approach) for providing for and dispersion believ implements
Demonstration Program	moderate-income families
	***************************************
(C) A poor rating shall be given if:	***************************************
(O) A poor rating shall be given if:	
(1) The proposed project will be located in a section characterized as one of subsidized using: or,	(B) An adequate rating shall be given if the proposed project:
using; or, as one of subsidized	(1) Is consistent with a local, officially-approved land use or development plan; or,
	and use or development plan; or,
2) The proposed project will establish the character of the continuous	
<ol> <li>The proposed project will establish the character of the section as one of subsidized using; or,</li> </ol>	(2) Is consistent with sound growth patterns, although located in a community that
using; or,	does not have officially approved land patterns, atthough located in a community that
	development plans
3) Social, recreational, educational, commercial and beauty desired	
3) Social, recreational, educational, commercial, and health facilities and services, and the interpretation of the services and services.	(O) A poor rating shall be given if the property
er municipal services: (a) are not, or will not be by the occupancy date or very shortly reafter, accessible to the project; or (b) although accessible to the project; or (c) although accessible to the project; or (d) although accessible to the project; or (d) although accessible to the project; or (e) although accessible to	(1) Does not satisfy any of the above
reafter, accessible to the project; or (b) although accessible to the project, are inferior to se generally found in neighborhoods consisting largely of standard project, are inferior to	(1) Does not satisfy any of the above conditions; or,
se generally found in neighborhoods consisting largely of standard, unsubsidized housing a similar market value; or,	the Blove conditions; or,
a similar market value; or,	(2) Is contrary to sound growth patterns
	(2) Is contrary to sound growth patterns
	to some growth patterns
Travel time and cost via public transportation or private and cost v	
Travel time and cost via public transportation or private auto from the neighborhood imployment providing a range of jobs for low(sr) traceme auto from the neighborhood	5. Relationship of proposed project to shudes!
imployment providing a range of jobs for low(er) income workers will be appreciably then that usually required in the metropolitan area or two workers.	5. Relationship of proposed project to physical environment  Buperior  Adequate
ter than that usually required in the metropolitan area or town.	Poor Buperior Adequate
position and of Wwit,	Objectives:
	To provide an attractive and well-planned physical environment.
	To prevent any adverse impact on the approximation province in the control of the
	To prevent any adverse impact on the environment resulting from construction of the proposed housing.
	of the

To avoid site locations whose environmental conditions would be detrimental to the success of an otherwise sound project.  (A) A superior rating shall be given if the proposed housing will:  (1) Embody outstanding land use planning and excellent architectural treatment, and	(B) An adequate rating shall be given if the applicant, his staff, or other personnel which he will utilize (including contractors, subcontractors, architects, consultants, etc.), and had he will receive, considered together have demonstrated an acceptable ability in past performance (in either subsidized, unsubsidized, conventionally-financed developments of related fields) based on each of the following conventionally-financed.
	related fields), based on each of the following considerations: (a) Ability to meet progress target dates; (b) good quality of housing produced; (c) ability to produce housing at
(2) Be free from adverse environmental conditions, natural or manmade, such as instability, flooding, septic tank backups, sewage hazards, or mudslide; harmful air poliution, smoke or dust; excessive noise, vibration, or vehicular traffic; unsanitary rodent or vermin infestation; or dangerous fire hazards; and,	cost equivalent to that of similar units of comparable quality; (d) compliance with Equivalently guidelines and requirements. In the case of an applicant without previous experience in housing or related fields or an LHA with no units under management, a adequate rating will be given if there is no demonstrable reason to believe that it will bunsble to meet the above conditions
(8) Not, considering both long-term and short-term effects, impact or impair ecologically valuable or significant natural areas, such as wildlife areas, ground water or surface water areas, and parklands, or significant historical or archeological areas	(C) A poor rating shall be given to any proposal which does not meet the above condition
***************************************	***************************************
(B) An adequate rating shall be given if the proposed project will: (1) Embody sound land use planning and good architectural treatment; and	7. Project potential for creating minority employment and business opportunities  Superior Adequate Poor  Objectives:
***************************************	To encourage housing proposals which will generate job opportunities for minorit
(2) Be free from adverse environmental conditions that cannot be corrected; and	workers.  To provide opportunities for business concerns owned in substantial part by minority persons.
	(A) A superior rating will be given if the proposal shows good potential, based on the applicant's stated, specific goods, hirtog timestables, and past performance, if any, for:
(8) Not have an unreasonably adverse impact on the environment	(1) Providing training and/or employment for minority persons; and
***************************************	
***************************************	
(C) A poor rating shall be given if the proposed project will:  (1) Embody poor land use planning or poor architectural treatment; or,	(2) Utilizing business concerns (including but not limited to the prime contractor owned, controlled or managed in substantial part by minority persons. This potential mainclude training, employment and business opportunities in all phases of development including but not limited to planning, site development, building, maintenance, and
(2) Be subject to serious environmental conditions which cannot be corrected; or,	management
***************************************	
(3) Will substantially or unreasonably disrupt the environment or ecologically valuable or unique natural areas	(B) An adequate rating will be given if:  (1) The proposal has good potential, based on the above factors, for satisfying eiths of the two conditions set forth for a "superior" rating; or,
6. Ability to perform Superior Adequate Poor	
Objective: To produce housing promptly and to provide quality housing at a reasonable cost, taking into account Equal Opportunity guidelines and requirements.  (A) A superior rating shall be given if the applicant, his staff, or other personnel which he will utilize (including contractors, subcontractors, architects, consultants, etc.), and help he will receive, considered together, have demonstrated good ability in past performance	(2) The housing market area has no minority population or the area from which labor could feasibly be recruited and business concerns feasibly contracted has a minority population so low that it would be impossible for the applicant to achieve a "superior" of "adequate" rating
(in either subsidized, unsubsidized, conventionally-financed developments or related fields)	
based on each of the following considerations: (a) Ability to perform well within program target dates; (b) high quality of housing produced; (c) ability to produce housing at a	
cost at or below similar units of comparable quality; (d) compliance with Equal Opportunity guidelines and requirements	(C) A poor rating shall be given to a proposal which shows poor or no potential for satisfying any of the above conditions
***************************************	

<ol><li>Provision</li></ol>	for sound	i housing	management
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Objective: To encourage the development of well-managed and well-maintained projects so as to significantly increase their potential for successful, long-term operation and to foster good relations between tenants and management and the surrounding community.

(A) A superior rating shall be given to a proposed project which:

(1) If submitted under the section 236 or Rent Supplement programs (a) includes a man-
agement plan (based on "Management Plan Requirements"), which significantly exceeds
present HUD requirements and guidelines in terms of the quality of management proposed
and the services to be provided; and (b) has a sponsor and, if applicable, management agent
which have demonstrated, through past performance, superior: Maintenance policies
financial stability, tenant-management relations, and overall management practices (with
due consideration for past performance in regard to avoid! defaults, need for mortgage
payment relief or other significant problems); or,

(2) If submitted by a Local Housing Authority, the Authority has demonstrated superior: Maintenance policies, financial stability, tenant-management relations and overall management practices

(B) An adequate rating shall be given to a proposed project which:

(1) If submitted under the Section 236 or Reat Supplement programs, (a) includes a management plan (based on "Management Plan Requirements"), which meets current HUD requirements and guidelines in terms of the quality of management proposed and the services to be provided; and (b) has a sponsor and, if applicable, management agent which have demonstrated their ability or show potential for meeting project management requirements; or,

(2) If submitted by a Local Housing Authority, (a) the Authority has demonstrated by its past performance adequate: maintenance policies, financial stability, tenant-management

relations and overall management policies; or,

(8) If submitted by a Local Housing Authority with no units under management, the Authority demonstrates the potential to meet project management requirements

(O) A poor rating shall be given to any proposal project which does not meet any of the above requirements

#### SUMMARY OF RATINGS

Priority group. Oheck only one box shown below representing the total number of ratings sesigned on the formy or discopprosel. A Superior or Adequate rating is required for all criteria.

The same of the sa										
	Section 22	B6(I) 1		Rent supplement, section 280 er low-rent public housing						
Priority		Ratings		Petaden	Priority Buperior Adequate Poor					
group	Buperior	Adequate	Poor	group			Poor			
1. □ 2. □ 3. □ 4. □ 5. □ 6. □ 7. □ 8. □	7 6 5 4 3 2 1 6	0 1 2 3 4 5 6	0	1. D 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	8 7 8 8 4 8	8 1 2 8 4 5 5 7	0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0			
Disapproving Criterion & tion 236.	ral. A Poor rath 8 (Management	ng on any criteric ) is not applicat	on: ole to Sec-	□ Disappro	val. A Poor rati	ng on any oriter	losu			

NOTE: Proposals shall be evaluated when received and shall not be stockpiled unreasonably. After rating has been assigned above, proposals in priority group 1 shall be funded shead of those in priority group 2, proposals in priority group 2 shall be funded ahead of those in group 3, and so on. Within each group, proposals shall be funded in order of date of receipt of applications suitable for processing.

#### EVALUATION PREPARED BY

(Date) (Name and title)

The above ratings have been sesigned with my approval.

(Date) Director, Operations Division Area Office or Chief Underwriter, Insuring Office

Effective date. This part shall be effective February 7, 1972.

RICHARD C. VAN DUBEN, Under Secretary, Department of Housing and Urban Development,

[FR Doc.72-150 Filed 1-6-72;8:45 am]

#### MISCELLANEOUS AMENDMENTS

In the recodification and republication of the regulations of the Department of Housing and Urban Development appearing at 36 F.R. 24402, December 22, 1971, miscellaneous amendments originally published at 36 F.R. 23799, December 15, 1971 and 36 F.R. 24056, December 18, 1971, were omitted. These amendments are reprinted below without change except to renumber them where necessary to conform to the new codifi-

cation of Title 24 of the Code of Federal Regulations.

#### PART 200-INTRODUCTION

1. In § 200.77, paragraphs (n), (x), (aa)(3), and (cc)(3) are amended and paragraphs (jj), (kk), and (ii) are added to read as follows:

§ 200.77 Assistant Commissioner-Comptroller and Deputy.

. . . .

(n) To keep, or cause to be kept under

\$2,500 for business concerns displaced on or after August 10, 1965

(2) Maximum amount—relocation adfustment. The total relocation adjustment payment that may be made for a family or elderly individual shall be an amount not to exceed \$500 which, when added to 20 percent of the annual income of the family or individual at the time of displacement, equals the average annual gross rental required for a decent, safe, and sanitary dwelling of modest standards adequate in size to accommodate the family or individual (in the area in which the Federally assisted activities are carried out or in other areas not generally less desirable in regard to public utilities and public and commercial

facilities), as determined by the Agency. (3) Maximum amount—additional relocation payment. The total additional relocation payment that may be made to a family or elderly or handicapped individual shall consist of monthly payments over a period not to exceed 24 months and shall be paid in an amount (not to exceed \$500 in the first 12 months and not to exceed \$500 in the second 12 months) which, when added to 20 percent of the annual income of the family or individual at the time of displacement, shall be equal to the average annual gross rental required at such time to secure a decent, safe, and sanitary dwelling of modest standards adequate in size to accommodate the family or individual (in the area in which the federally assisted activities are carried out or in other areas not generally less desirable in regard to public utilities and commercial facilities), as determined by the Agency.

(4) Maximum amount-replacement housing payment. The total replacement housing payment that may be made for a family or individual eligible for a replacement housing payment under 500.103c(c) of the regulations in this subpart shall be an amount not to exceed \$5,000, which, when added to the acquisition payment, shall be equal to the average price required for purchase of a decent, safe, and sanitary dwelling of modest standards adequate in size to accommodate the displaced owner, which is reasonably accessible to public services and places of employment, and which is available on the private market.

§ 500.110 Determinations in condemnation proceedings.

Notwithstanding any other provision of the regulations in this subpart, when

property is acquired by proceedings condemnation, and the amount of judgment includes an allowance for of the expenses included within the d. nition of relocation payment in § 500 (p) of this subpart, the portion of judgment representing compensafor these expenses, if separately stashall be entitled to recognition as a re cation payment in an amount not exceed the applicable dollar limitaticof § 500.109: Provided, That the alleance for actual direct loss of propemakes no compensation for loss of gooc. will or profit. - white posts

#### PART 511—NEIGHBORHOOD DEVEL OPMENT PROGRAM PROJECT SE-LECTION SYSTEM

Sec.

511.1 Scope

511.2 Definitions.

511.4 Program prerequisites.

511.6 Criteria for evaluating applications.

511.8 Local effort and coordination.

511.10 Impact of area selected.

511.12 Program management capacity.
511.14 Local equal employment capacity.

14 Local equal employment and entrepreneurial effort.

511.16 Local need.

511.18 Commitment of local, county, State and Federal entities to project cr

program.

511.20 Expansion of housing for low- and

moderate-income families.
511.22 Community development.

AUTHORITY: The provisions of this Part 511 issued under secs. 131-134, of the Housing Act of 1949, as amended, 82 Stat. 518-520, 42 U.S.C. 1469-1469c.

Source: The provisions of this Part 511 appear at 37 P.R. 7388, Apr. 14, 1972, unless otherwise noted.

## § 511.1 Scope.

(a) Purpose. This part sets forth criteria and procedures to be used in preliminary evaluation of applications for Federal loan and grant assistance to local public bodies and agencies for Neighborhood Development Programs, which are urban renewal undertakings and activities, in one or more urban renewal areas, that are planned and carried out on the basis of annual increments.

(b) Procedures. Submissions will first be reviewed against six prerequisites. If any of these prerequisites are not met. the application will be rejected. If the application appears to meet the prerequisites, it will be evaluated against the point rated criteria and assigned a point V-Office of Asst. S

eing. Then, depending rating of the application of soffice, the application submit further application of the supporting document decision on the submit further application of the application of the application does not supply and technical resistant of the application does not supply point rating as compared to the supply and the supply application does are supply as compared to the supply application does on the supply applied to the

estions, or if the applica ide eligibility or nts, the application documents will oplicant with advice chiciency. Remedia: he deficiencies mu fore the proposal m The provisions of the not apply to project communities, or such ovative projects as ary for Community etermine. The Dep aght to negotiate the scope of the pro and/or the amount ince requested.

#### 511.2 Definitions.

As used in the regular (a) "Applicant" in agency as defined to the Housing Act of 421; 42 U.S.C. 1460 ing for Federal As Neighborhood Deve.

(b) "City Demonments that agency to be established under Demonstration Cities Development Act of 42 U.S.C. 3301, to Cities program at the

(c) "Locality" mejurisdiction or jurisderal purpose governawhose behalf the apparents that the proassistance has been

(d) "Low and means an income level the maximum income a family of four undesidized housing prosection 235 or 236 cm and family of the level that the level t

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by proceedings in he amount of the allowance for any sed within the deficience in § 500.167, the portion of the ing compensation separately stated cognition as a relocation amount not to a dollar limitations of, That the allowat hose of property on for loss of good-

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taions of this Part 511 -134, of the Housing lad, 82 Stat. 518-520:

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ubmissions will first six prerequisites. If uisites are not metbe rejected. If the to meet the prereqmainted against the and assigned a point

rating. Then, depending upon the relanve rating of the application among other such applications pending in the area office, the applicant may be asked to submit further application material. with supporting documentation so that a final decision on the grant may be reached. Such application material is subject to reviews to determine compliance of the application with basic eligibility and technical requirements. If an application does not receive a high enough point rating to qualify for funding as compared to other pending applications, or if the application cannot meet basic eligibility or technical requirements, the application and any supporting documents will be returned to the applicant with advice as to the areas of deficiency. Remedial action regarding the deficiencies must be undertaken before the proposal may be reconsidered. The provisions of these regulations do not apply to projects involving New Communities, or such other critical or innovative projects as the Assistant Secretary for Community Development may determine. The Department reserves the right to negotiate the modification of the scope of the proposed undertaking and/or the amount of financial assistance requested.

#### § 511.2 Definitions.

As used in the regulations in this part:

(a) "Applicant" means a local public agency as defined under sec. 110(h) of the Housing Act of 1949; 63 Stat. 413, 421; 42 U.S.C. 1460(h), which is applying for Federal Assistance under the Neighborhood Development Program.

(b) "City Demonstration Agency" means that agency which was required to be established under title I of the Demonstration Cities and Metropolitan Development Act of 1966, 80 Stat. 1255, 42 U.S.C. 3301, to carry out a Model Cities program at the local level.

(c) "Locality" means the political jurisdiction or jurisdictions having general purpose government powers upon whose behalf the application for Federal assistance has been submitted.

(d) "Low and moderate income" means an income level which is less than the maximum income eligibility level for a family of four under either of the subsidized housing programs authorized by section 235 or 236 of the National Housing Act, as amended, 82 Stat. 476, 477, 498, 12 U.S.C. 1715Z, 1715Z-1.

(e) "Low- and moderate-income housing" refers to housing with a fair market value that is equal to or less than the resultant of multiplying the section 235—236 maximum income for a family of four, as established by the Secretary for the county in which the project is located, by a factor of 3. "Low- and moderate-income housing" also refers to housing with an annual rental equal to or less than one-third of such section 235—236 maximum income.

(f) "Model neighborhood" means that geographical area in which funds are being spent under a program authorized by title I of the Demonstration Cities and Metropolitan Development Act of 1966, 80 Stat. 1255, 42 U.S.C. 3301.

(g) "NDP area" means the area or areas in which urban renewal project activities are taking place or are to take place under a neighborhood development program.

(h) "Renewal experience" means those renewal efforts and related relocation activities carried out under one or more urban renewal projects under sec. 110(c) of the Housing Act of 1949, as amended, 63 Stat. 413, 414; 42 U.S.C. 1450; or a Neighborhood Development Program as described in sections 131-134 of said Housing Act.

## § 511.4 Program prerequisites.

For the Neighborhood Development Program there are the following six prerequisites:

(a) Workable program. The presence of a certified or certifiable Workable Program pursuant to section 101(c) of the Housing Act of 1949, as amended, Public Law 81–171, 63 Stat. 413; U.S.C. 1451c. By "certifiable workable program" is meant a reasonable probability of certification or recertification based upon submitted materials and local progress towards meeting certification standards and conditions as indicated in HUD's Handbook for the Workable Program, RHA 7100.

(b) Local general plan. The presence of a local general plan, and conformance of the project thereto. A "local general plan" is defined as an official document or documents containing a land use plan, thoroughfare plan, community facilities plan, public improvement program, zoning ordinance and map, and subdivision regulaions so interrelated that taken together they serve as a comprehensive guide for the physical development of the locality as a whole. The plan must

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have been endorsed or adopted by the local governing body of the locality in which the NDP is proposed.

(c) Civil rights. Submission of acceptable assurances of compliance with title VI of the Civil Rights Act of 1964. Public Law 88-352, 78 Stat. 252, 42 U.S.C. 2000d and HUD title VI regulations 24 CFR Part I, 29 F.R. 16280 and with affirmative action plan requirements pursuant to Executive Order 11246, as amended, 30 F.R. 12319, and HUD regulations 24 CFR Part 130, 36 F.R. 20688.

(d) Relocation requirements (if applicable). (1) Submission of acceptable assurance of compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, 42 U.S.C. 4601, and:

(2) Absence of any known impediment to the applicant's ability to meet HUD relocation requirements and the applicant's and or locality's ability to fulfill requirements for replacement housing. "Known impediment" refers to a practical inability to provide adequate relocation assistance and replacement housing, or a legal inability to comply with relocation-related provisions of Title I of the Housing Act of 1949, 63 Stat. 413, 414; 42 U.S.C. 1450, et seq.

(e) A-95 coordination. Evidence that A-95 coordination is in process. The phrase "A-95 coordination" refers to the procedure involving review of applications by the appropriate agency designated under OMB Circular A-95.

(f) Housing component. Absence of any known barrier to an adequate or better rating on the Housing Production and Mortgage Credit Project Selection System (37 F.R. 203-9, January 7, 1972) for any subsidized housing required to meet the housing component for the program.

# § 511.6 Criteria for evaluating applica-

Criteria for evaluating applications are divided into the following major categories:

- (a) Local effort and coordination;
- (b) Impact of area selected;
- (c) Program management capacity;
- (d) Local equal employment and entrepreneurial effort;
  - (e) Local need;
- (f) Commitment of local, county, State, and Federal entities to project or program;

2: 6.

(g) Expansion of housing for low. moderate-income families:

(h) Community development

The elements considered in each of gory are described in the following tions, and the method of assistant as a second consistency of the following points to each element or category in the following manner unless otherwise specifically dicated: If a statement under a pricular element or category appropriately to the project application, the application awarded the number of points assistant of the project in the points assistant as a statement. If no statement of that statement is no points are awarded to application for that element.

# § 511.8 Local effort and coordination

of the values of paragraphs (a) and it of this section.)

(a) Budget and capital improvemerplan. All necessary project related publi improvements, facilities, and services aridentified in the appropriate local buckets and/or capital improvements plan except those included in project

(b) Model cities. The NDP area is to whole or in part a Model Neighborhood and there exists a statement by the Compensation Agency Director that the activities for which funding is requested are consistent with the goals and objectives of the Model Neighborhood plan

# § 511.10 Impact of area sciected.

(The value of this category is the sum of the values of paragraphs (a) to (d) of this section.)

(a) Rehabilitation or addition of housing. Seventy-five percent of the existing substandard residential units in the NDP area will be rehabilitated, and 75 percent of the total units will be retained, or the project will add to the housing stock without displacement.

"Substandard residential units" refer to those residential units which are out of compliance with the appropriate local housing and building codes.

(b) Redevelopment areas. The NDP area is in a designated redevelopment area as defined by the Public Works and Economic Development Act of 1965, as amended Public Law 89-136, 79 Stat. 552,

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(a) Locality that is newal experience. (To ment is the sum of and (2) of this parameter). There is const.

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(2) Since July 1. a reasonable relationitial cost and timactual cost and deve

(b) Locality that renewal experience. element is the sur (1), (2), and (3)

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42 U.S.C. 3121, and the program shows evidence of conformance to the Overall Economic Development Plan for that

(c) Environmental deficiencies. The locality is taking active steps (including those proposed under the NDP) to eliminate environmental deficiencies in the NDP area, including but not limited to any among those listed below.

- (1) Overcrowding of land.
- (2) Substantial substandard housing.

(3) Lack of open space.

- (4) Transportation (including parking) deficiencies.
- (5) Inadequate public facilities, including those for water, sewage, and solid waste.
- (6) Incompatible land uses.
- (9) Inadequate air and water quality.
- (d) Expansion of low- and moderateincome housing. The program contributes to the realistic plan referred to in
- § 511.12 Program management capac-

(The value of this category is the sum of the values of either paragraphs (a) or (b) of this section. For purposes of this section, 4 points equals good, 8 points equals superior.)

(a) Locality that has had previous renewal experience. (The value of this element is the sum of subparagraphs (1)

and (2) of this paragraph.)

(2) Since July 1, 1968, there has been a reasonable relationship between past mitial cost and time commitments and actual cost and development time\_4 or 8

(b) Locality that is without previous renewal experience. (The value of this element is the sum of subparagraphs (1), (2), and (3) of this paragraph.)

(1) The applicant is organizationally part of a local general purpose government

- (2) There is a likelihood of successful execution and completion of the proposed NDP, based on the relationship to the proposed NDP activities of the following factors:
  - (1) Administrative budget.
  - (ii) Time phasing for critical events.

g Transa was pina a sa in in in

(iii) Staff assignments.

- (iv) Budgeted activities of other local agencies \_\_\_\_\_4 or 8
- (3) Either the locality's performance with other HUD programs in the last 3 years was satisfactory in all programs,

For localities without other HUD program experience, the locality's performance in its public development efforts during the last 3 years was satisfactory

# § 511.14 Local equal employment and entrepreneurial effort.

(The value of this category is the sum of the values of paragraphs (a), (b), and (c) of this section.)

(a) Activities undertaken by the locality have provided relatively superior opportunities for training and/or employment of minority persons\_\_\_\_\_\_\_\_\_\_3

(b) Activities undertaken by the locality have provided relatively superior opportunities for business concerns owned, controlled, or managed in substantial part by minority persons\_\_\_\_3

(c) The applicant has taken affirmative action in its own employment in the training and/or employment of minority persons with relatively superior results

In determining whether or not performance has been "relatively superior" the following items will be taken into consideration: Absolute numbers of persons actually trained or hired in relation to numbers of minority group persons in the labor market area; total dollar value of contracts let to minority entrepreneurs in relation to total dollar amount of contracts let by locality; within the administering agency, racial composition at all levels of employment and absolute number of training opportunities made available to minority group persons.

#### § 511.16 Local need.

(The value of this category is the sum of the values of paragraphs (a) and (b) of this section.)

(a) Median income of jurisdiction. The median annual family income of the geographic area of jurisdiction of the applicant compared to the State median annual family income is: (Select one, if appropriate):

(1) \$1-\$500 below State median\_\_\_\_ 3

(2) More than \$500 below State median 6

(b) Median income of NDP area. The median annual family income of the NDP area compared to the State annual median family income is: (Select one if appropriate):

(1) \$1-\$500 below State median\_\_\_\_

(2) More than \$500 below State

Median family incomes for the NDP area and the State are to be obtained by utilizing the City-County Data Book or other census data if possible. Or use best available data.

§ 511.18 Commitment of local, county,
State, and Federal entities to project
or program.

(The value of this category is the sum of paragraphs (a) to (d) of this section.)

(a) Local commitment. There was substantial participation by the chief executive and governing body of the locality during the planning of the project, and they are demonstrating current public commitment in support of the project.

(b) Resident commitment. There was effective widespread participation of a representative spectrum of NDP area residents in the development of project objectives and there is evidence of current support for the execution of the project

(c) Coordination of resources. There was substantial participation of other local agencies during planning, and there is a current commitment including resources, from Federal, State, county, or local entities other than those precessary to satisfy the local share requirement 4

(d) Participation in areawide or metropolitan planning. There is active participation by the locality's representatives in the areawide or metropolitan planning organization.

§ 511.20 Expansion of housing for low. and moderate-income families.

(The value of this category is the sum of the values of paragraphs (a), (b), and (c) of this section.)

(c) Dispersion of low- and moderate-income housing. The locality has a realistic plan to expand the supply of standard low- and moderate-income housing in a nondiscriminatory way outside areas of concentration of economically disadvantaged or minority citizens————4

#### § 511.22 Community development.

The degree to which the project is necessary for undertaking other publicly supported community development activities\_\_\_\_\_\_0 to 6

"Community development activities" refers to those publicly supported physical development activities and those related social or economic development activities being carried out or to be carried out within a reasonable period of time in accordance with a locally determined or areawide plan or strategy. Factors taken into consideration may include the project's responsiveness to local needs and objectives, the economics possible through coordinated or joint action, the degree of support by the appropriate unit(s) of local general-purpose government, and the management capacity within local general-purpose government.

# SUBCHAPTER B-OPEN-SPACE LAND

Sec.

# Sec. 540.1 Purposes. 540.2 Definitions. 540.2 Grants for open space land and historic preservation. 540.4 Eligible projects. 540.5 Requirements and conditions for assistance.

540.6 Acquisition of lesser interest.
540.7 Valuation of donated land.
540.8 Valuation of donated material.
540.9 Labor standards.

540.10 Project selection.

540.11 Establishment of acquisition date.540.12 Establishment of development date.

540.13 Changes in uses and conversions.

#### Ch. V-Office of Asst. Se

340.14 Information, applications.

10.15 Waivers.

AUTHORITY: The provision issued under section 7(d) of orban Development Act, 42

Source: The provisions of coar at 37 F.R. 23717, No. therwise noted.

## 540.1 Purpose.

The purpose of these r mplement title IV of t: Urban Development Act ww 91-609, 84 Stat. 177 ectives of the program a law include: To help cu: and prevent the spread and deterioration, to e economic and desirable ment, to assist in prese properties of historic . value, and to help provide reational, conservation. by assisting State and lo in taking prompt action preserve, and develop of a manner consistent W long-range development urtian areas, (b) acquir restore areas, sites, and toric or architectural ve velop and improve open public urban land in programs to encourage ocal public and privat this end.

#### § 540.2 Definitions.

(a) "Changes in useing the open space land contemplated in the Grant Assistance Conti

(b) "Conversions" I land use from open st open space uses.

(c) "Donation" mea terial, or services prov applicant for incorpora at no cost to the appl

(d) "Local public public body (including vision) created by or a State or two or more bination of such box Indian tribes, bands, & (including Alaska In Eskimos) of the Unit

(e) "Open Space land located in an uri value for: (1) Park ar. poses, (2) conservation States a ement. unds not contract to carry hich this i prior to , and the ursed by : Departussary to : Part 1, that projection as ment of

-periodic contract to carry hich this ted prior rt 1, and s for the activity. tion with periodic :tive date tatement is being h all rersuant to he extent the state-1(2) proration for found by official to that the requireit to this that any he statecorrected. Sons. (1) for Fednstitution rance reextend to ther pracit of stu-

with reer educanatitution, tes to the respect to of persons its of the ty to parervices or i, shall be ion unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

#### § 1.6 Compliance information.

(a) Cooperation and assistance. The responsible Department official and each Department official who by law or delegation has the principal responsibility within the Department for the administration of any law extending financial assistance subject to this Part I shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this Part I and shall provide assistance and guidance to recipients to help them comply voluntarily with this Part I.

(b) Compliance reports. Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this Part 1.

(c) Access to sources of information. Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this Part 1. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person shall fall or refuse to furnish this information. the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) Information to beneficiaries and participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this Part 1 and its applicability to the pro-

gram or activity under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this Part 1.

#### § 1.7 Conduct of investigations.

(a) Periodic compliance reviews. The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this Part 1.

(b) Complaints. Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this Part 1 may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) Investigations. The responsible Department official or his designee shall make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this Part 1. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this Part 1 occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this Part 1.

(d) Resolution of matters. (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this Part 1, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 1.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)
(1) of this section the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing

(e) Intimidatory or retaliatory acts prohibited. No recipient or other person shall intimidate, threaten, coerce, or dis-

eriminate against any person for the purpose of interfering with any right or privilege secured by Title VI of the Act of this Part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this 1. The identity of complainants Part shall be kept confidential except to the extent necessary to carry out the purposes of this Part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

#### § 1.8 Procedure for effecting compliance.

(a) General. If there appears to be a failure or threatened failure to comply with this Part 1, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this Part 1, may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) Noncompliance with § 1.5. If an applicant fails or refuses to furnish an asurance required under \$ 1.5 or otherwise fails or refuses to comply with the requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph, except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to a contract therefor approved prior to the effective

date of this Part 1.

(c) Termination of or refusal to grant or to continue Federal financial assistance. No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply

and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this Part 1, (3) the action has been approved by the Secretary, and (4) the expiration of 30 days after Secretary has filed with the the committees of the House and Senate having legislative jurisdiction over the program or activity involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) Other means authorized by law. No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Secretary, (3) the applicant or recipient has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least ten days from the mailing of such notice to the applicant or recipient. During this period of at least ten days additional efforts shall be made to persuade the applicant or recipient to comply with this Part 1 and to ta a such corrective action as may be app priate.

#### Hearings.

(a) Opportunity for hear'r. 7 7ever an opportunity for a hearing is required by § 1.8(c), rear ...able notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or re-

cipient that the matter in c been set down for hearing time and place. The time a fixed shall be reasonable and ject to change for cause. The ant, if any, shall be advised and place of the hearing. or recipient may waive a hear mit written information an for the record. The failure cant or recipient to reques under this paragraph (a) or a hearing for which a date ! shall be deemed to be a w right to a hearing under se the Act and § 1.8(c) of this consent to the making of a the basis of such inform: available.

(b) Time and place of her ings shall be held at the o Department in Washington time fixed by the responsible official unless he determine convenience of the applicant or of the Department requirother place be selected. Heari: held before the responsible I official or, at his discretion, be ing examiner designated in with sections 3105 and 3344 United States Code.

(c) Right to counsel. In a ings under this section, the a recipient and the Department the right to be represented

- (d) Procedures, evidence. (1) The hearing, decision, at ministrative review thereof s' ducted in conformity with 5 557 and in accordance with and procedure for hearings is Department and published i this subtitlte relating to the the hearing, giving of notices to those provided for in par of this section, taking of tes hibits, arguments and bric for findings, and other rela: Both the Department and th or recipient shall be entitled all relevant evidence on t: stated in the notice for he determined by the officer cor hearing at the outset of or hearing.
- (2) Technical rules of ev not apply to hearings condu ant to this Part 1, but rules ( derigned to assure product most credible evidence avail subject testimony to test by .

#### EXECUTIVE ORDER 11063

[27 Fed. Reg. 11527, eff. 11-20-62]

[74501] Whereas the granting of Federal assistance for the provision, rehabilitation, or operation of housing and related facilities from which Americans are excluded because of their race, color, creed, or national origin is unfair, unjust, and inconsistent with the public policy of the United States as manifested in its Constitution and laws; and

Whereas the Congress in the Housing Act of 1949 has declared that the general welfare and security of the Nation and the health and living standards of its people require the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family; and

Whereas discriminatory policies and practices based upon race, color, creed, or national origin now operate to deny many Americans the benefits of housing financed through Federal assistance and as a consequence prevent such assistance from providing them with an alternative to substandard, unsafe, unsanitary, and overcrowded housing; and

Whereas such discriminatory policies and practices result in segregated patterns of housing and necessarily produce other forms of discrimination and segregation which deprive many Americans of equal opportunity in the exercise of their unalienable rights to life, liberty, and the pursuit of happiness; and

Whereas the executive branch of the Government, in faithfully executing the laws of the United States which authorize Federal financial assistance, directly or indirectly, for the provision, rehabilitation, and operation of housing and related facilities, is charged with an obligation and duty to assure that those laws are fairly administered and that benefits thereunder are made available to all Americans without regard to their race, color, creed, or national origin:

Now Therefore, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:

# Part I—Prevention of Discrimination

[14002] Section 101. I hereby direct all departments and agencies in the executive branch of the Federal Government, insofar as their functions relate to the provision, rehabilitation, or operation of housing and related facilities, to take all action necessary and appropriate to prevent discrimination because of race, color, creed, or national origin—

- (a) in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are—
  - (i) owned or operated by the Federal Government, or
- (fi) provided in whole or in part with the aid of loans, advances, grants, or contributions hereafter agreed to be made by the Federal Government, or
- (iii) provided in whole or in part by loans hereafter insured, guaranteed, or otherwise secured by the credit of the Federal Government, or
- (iv) provided by the development or the redevelopment of real property purchased, leased, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under a loan or grant contract hereafter entered into; and
- (b) in the lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institu-

● 1972 P-H Inc. EOH-See Cross Reference Table for intest developments

¶4002

tions, insofar as such practices relate to loans hereafter insured or guaranteed by the Federal Government.

[14003] Sec. 102. I hereby direct the Housing and Home Finance Agency and all other executive departments and agencies to use their good offices and to take other appropriate action permitted by law, including the institution of appropriate litigation, if required, to promote the abandonment of discriminatory practices with respect to residential property and related facilities heretofore provided with Federal financial assistance of the types referred to in Section 101 (a) (ii), (iii), and (iv).

# Part II—Implementation by Departments and Agencies

[14004] Sec. 201. Each executive department and agency subject to this order is directed to submit to the President's Committee on Equal Opportunity in Housing established pursuant to Part IV of this order (hereinafter sometimes referred to as the Committee), within thirty days from the date of this order, a report outlining all current programs administered by it which are affected by this order.

responsible for obtaining compliance with the purposes of this order as the order applies to programs administered by it; and is directed to cooperate with the Committee, to furnish it, in accordance with law, such information and assistance as it may request in the performance of its functions, and to report to it at such intervals as the Committee may require.

[¶4006] Sec. 203. Each such department and agency shall, within thirty days from the date of this order, issue such rules and regulations, adopt such procedures and policies, and make such exemptions and exceptions as may be consistent with law and necessary or appropriate to effectuate the purposes of this order. Each such department and agency shall consult with the Committee in order to achieve such consistency and uniformity as may be feasible.

# Part III-Enforcement

[14007] Sec. 301. The Committee, any subcommittee thereof, and any officer or employee designated by any executive department or agency subject to this order may hold such hearings, public or private, as the Committee, department, or agency may deem advisable for compliance, enforcement, or educational purposes.

corder concludes that any person or firm (including but not limited to any individual partnership, association, trust, or corporation) or any State or local public agency has violated any rule, regulation, or procedure issued or adopted pursuant to this order, or any nondiscrimination provision included in any agreement or contract pursuant to any such rule, regulation, or procedure, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation, and persuasion unless similar efforts made by another Federal department or agency have been unsuccessful. In conformity with rules, regulations, procedures, or policies issued or adopted by it pursuant to Section 203 hereof, a department or agency may take such action as may be appropriate under its governing laws including, but not limited to, the following:

#### It may-

(a) cancel or terminate in whole or in part any agreement or contract with such person, firm, or State or local public agency providing for a loan, grant, contribution, or other Federal aid, or for the payment of a commission or fee;

- (b) refrain from extending any further aid under any program administered by it and affected by this order until it is satisfied that the affected person, firm, or State or local public agency will comply with the rules, regulations, and procedures issued or adopted pursuant to this order, and any nondiscrimination provisions included in any agreement or contract;
- (c) refuse to approve a lending institution or any other lender as a beneficiary under any program administered by it which is affected by this order or revoke such approval if previously given.

[14009] Sec. 303. In appropriate cases executive departments and agencies shall refer to the Attorney General violations of any rules, regulations, or procedures issued or adopted pursuant to this order, or violations of any nondiscrimination provisions included in any agreement or contract, for such civil or criminal action as he may deem appropriate. The Attorney General is authorized to furnish legal advice concerning this order to the Committee and to any department or agency requesting such advice.

[14010] Sec. 304. Any executive department or agency affected by this order may also invoke the sanctions provided in Section 302 where any person or firm, including a lender, has violated the rules, regulations, or procedures issued or adopted pursuant to this order, or the nondiscrimination provisions included in any agreement or contract, with respect to any program affected by this order administered by any other executive department or agency.

# Part IV—Establishment of the President's Committee on Equal Opportunity in Housing

[[4011]] Sec. 401. There is hereby established the President's Committee on Equal Opportunity in Housing which shall be composed of the Secretary of the Treasury; the Secretary of Defense; the Attorney General; the Secretary of Agriculture; the Housing and Home Finance Administrator; the Administrator of Veterans Affairs; the Chairman of the Federal Home Loan Bank Board; a member of the staff of the Executive Office of the President to be assigned to the Committee by direction of the President, and such other members as the President shall from time to time appoint from the public. The member assigned by the President from the staff of the Executive Office shall serve as the Chairman and Executive Director of the Committee. Each department or agency head may designate an alternate to represent him in his absence.

[14012] Sec. 402. Each department or agency subject to this order shall, to the extent authorized by law (including § 214 of the Act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691)), furnish assistance to and defray the necessary expenses of the Committee.

# Part V—Powers and Duties of the President's Committee on Equal Opportunity in Housing

[14018] Sec. 501. The Committee shall meet upon the call of the Chairman and at such other times as may be provided by its rules. It shall: (a) adopt rules to govern its deliberations and activities; (b) recommend general policies and procedures to implement this order; (c) consider reports as to progress under this order; (d) consider any matters which may be presented to it by any of its members; and (e) make such reports to the President as he may require or the Committee shall deem appropriate. A report to the President shall be made at least once annually and shall include references to the actions taken and results achieved by departments and agencies subject to this order. The Committee may

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¶4013

provide for the establishment of subcommittees whose members shall be appointed by the Chairman.

- [14014] Sec. 502. (a) The Committee shall take such steps as it deems necessary and appropriate to promote the coordination of the activities of departments and agencies under this order. In so doing, the Committee shall consider the overall objective of Federal legislation relating to housing and the right of every individual to participate without discrimination because of race, color, creed, or national origin in the ultimate benefits of the Federal programs subject to this order.
- (b) The Committee may confer with representatives of any department or agency, State or local public agency, civic, industry, or labor group, or any other group directly or indirectly affected by this order; examine the relevant rules, regulations, procedures, policies, and practices of any department or agency subject to this order and make such recommendations as may be necessary or desirable to achieve the purposes of this order.
- (c) The Committee shall encourage educational programs by civic, educational, religious, industry, labor, and other nongovernmental groups to eliminate the basic causes of discrimination in housing and related facilities provided with Federal assistance.

[¶4015] Sec. 503. The Committee shall have an executive committee consisting of the Committee's Chairman and two other members designated by him from among the public members. The Chairman of the Committee shall also serve as Chairman of the Executive Committee. Between meetings of the Committee, the Executive Committee shall be primarily responsible for carrying out the functions of the Committee and may act for the Committee to the extent authorized by it.

#### Part VI-Miscellaneous

[14016] Sec. 601. As used in this order, the term "departments and agencies" includes any wholly-owned or mixed-ownership Government corporation, and the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories of the United States.

[14017] Sec. 602. This order shall become effective immediately.

UNITED STATES DISTRICT COURT FOR THY EASTERN DISTRICT

IN THE MATTER OF THE APPLICATION OF WILLIAM JONES. CLARENCE BRRIS. MARY HOBBS. ROBERT CURRY. NES. EVELYN BROWN THOMAS HOLMES MRS. EPPTE JOHNSON WILLIAM HARRIS. MRS. ALBERTHA JOHNSON MRS. ROSE WILLIS. MES. SHARA BROWN WILLIAM DORY MRS. ELLA HARRIS. CEORGE ROSTKY and GREAT NECK MANOR CIVIC ASSOCIATION, and all other similarly situated,

Petitioners

#### against

ROBERT C. MEADE, JAMES R. NULLS MICHAEL J. TULLY JR., GEORGE C. SOOS, FELIX G. ANDRIMS, JOHN F. MCDONALD, ARTHUR G. BINGHAM, WILLIAM H. PYAN, JR., TO N OF NORTH HEMPSTEAD.

First Respondent.

UNCTOR 4. GAYLE Executive Director, BERNARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS RENDRICK LOCAL UBLAY RENDUAL PLANNERS

Second Respondent

JOHN MAYLOTT and GERALD V. CTUICE, DEPT. OF HOUSING AND URBAN DEVELOPMENT

Third Pesnondent.

STATE OF NEW YORK) SS

ROBERT RIVERS, an attorney duly admitted to practice of law in the state of New York, hereby deposes under benalty of perjury.

That your deponent represents the petitioners in the above entitled action and fully familiar with the facts and circumstances of the within proceeding.

That this affirmation is submitted in answer to the second respondent's affidavit opposing the natitioners order to show cause.

That it is alleged by the second respondents that many of the petitioners in this action did not consent to their being named as a petitioner in this proceeding. It

appirmation

T' OPPOSITION

. . . .

must be pointed out that Great Neck Manor Civil Association is an organization with a large membership and therefore it would be impossible to use the names of all the members in the petition. Now since the executive members are bound to impliment the majority decision, it is very ludicrous for any executive member to say he or she did not consent for his or her name being on the petition. The action was not commenced by the individual members but by the Great Neck Manor Association through the executive members and the right course for any member who does not agree with the majority decision is to resign from the executive board.

That it is alleged that "TLLTA!" JONES, the President of Great Neck Manor Civic Association does not speak for the vast pajority of the remidents of the Great Neck.

It must be made clear that the petitioners do not claim to represent the residents of Great Neck, but the residents of Great Neck who are long fide members of Great Neck Manor Civic Association. A vast majority of the residents of Great Neck are opposed to the Spinney hill Project and have so stated their objections in two public meetings and by affixing their names to the annexed petition.

respondents that an alternate site was recommended, but the second respondent did not in anyway indicate when and where such an alternate site was recommended. There was no recommendation of an alternate site during the May 10, 1972, public meeting and it was your deponent who extracted a verbal promise from the second respondent that an alternate site would be recommended. Up till now, nothing was done to recommend an alternate site. It is therefore, surprising for the second respondents to claim that an alternate site was recommended.

That it is alleged that the petitioners

did not ask for nor request a hearing before the third respondents. The petitioners and your affirmant requested a meeting with the said third respondent to see if the proposal of the Spinney Hill Project could be reviewed. The said request was granted and the netitioners had their first meeting with the third respondents on September 8, 1972, and their second meeting on June 18 1973. After a long discussion with the said third respondents the decision to construct the project was unheld and the netitioners were even advised by the said third respondents that the only course left to the petitioners is to institute this proceeding. Alt is therefore untenable for the first respondents to suggest that the matter herein and the relief sought are not properly before the Court in view of the fact that all available administra tive review has not been someth by the metitioners. It is the submission of the potitioners that they have properly proceeded through the channels of review afforded by such agency and that there is sufficient ground to involve the jurisdiction of the United States District Court.

That the second respondents further alleged that the politioners are quilty of Inches since this proceeding was not commenced within a year after the public hearing held on May 10, 1972. It is the contention of the petitioners that after the said hearing and in view of the netitioners opposition to the said construction of the Spinney Mill project, the second respondents made a werbal provise that they would be recommending an alternate site. The petitioners, however had no intimation that the said verbal promise would be breached. It was only when the site for the construction was being cleared and the second respondents made it clear by their conduct that they were not going to recommend an alternate site that the petitioners realized that the second respondents were not going to alide by their verbal promise. The clearance of

the site took place less than a year after the commencement of this proceeding and therefore, the netitioners are not and can not be guilty of lackes.

THEREFORE, your affirmant respectfully prays that this Court denv the second respondents application in all respects.

Dated August 29 1973 Westbury IT

AFFIRMED INIDER DESIALT OF PERTIPE

POBLIPT ETVID



# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT NEW YORK APEA OFFICE 120 CHURCH STREET NEW YORK, NEW YORK 10007

1 4 JUN 1973

REGION II 26 Federal Place New York, New York 10007

IN REPLY REFER TO:

Robert Rivers Esq. 287 Post Avenue Westbury, New York

Dear Mr. Rivers:

Subject: Spinney Hill Neighborhood Development Program

Reference is made to your letters of May 11, 1973 and June 11, 1973 and our telephone conversation of June 13, 1973.

You are advised that the tentative meeting set up for Monday, June 18, 1973 at 1 p.m. with yourself and members of the Great Neck Manor Civic Association, is hereby confirmed.

Your letter of June 11, 1973 seems to imply that there was no response to your letter of May 11, 1973. This is not so. I made several attempts to contact you by telephone and had dicussions with your secretary regarding this matter. The first instance of direct telephone contact with you was on June 13, 1973 at which time a tentative appointment was established.

Thank you for your interest in this matter.

Sincerely,

Gerald V. Cruise Program Manager

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We the Taxing Home Cwrars of Great Neck, Momor area are in accord with this litigation and are against URBAN PRIMEWAL

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS, ROBERT CURRY, MRS. EVELYN BROWN, THOMAS HOLMES, MRS. EPPIE JOHNSON, WILLIAM HARRIS, MRS. ALBERTHA JOHNSON, MRS. ROSE WILLIS, MRS. SHARA BROWN, WILLIAM DORY, MRS. ELLA HARRIS, GEORGE ROSTKY and GREAT NECK MANOR CIVIC ASSOCIATION, and all others similarly situated,

Petitioners,

CIVIL ACTION NO.

-against-

73 C 1104

ROBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., GEORGE C. SOOS, FELIX G. ANDREWS, JOHN F. MCDONALD, ARTHUR G. BINGHAM, WILLIAM H. RYAN, JR., TOWN OF NORTH HEMPSTEAD.

ANSWER

First Respondent,

HECTOR H. GAYLE, Executive Director, BERNARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK, LOCAL URBAN RENEWAL PLANNER,

Second Respondent,

JOHN MAYLOTT and GERALD V. CRUISE, DEPT. OF HOUSING AND URBAN DEVELOPMENT,

Third Respondent.

FIRST RESPONDENTS, in and for their Answer to the Complaint, set forth the following:

#### ANSWER

- 1. Respondents allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1 and 2.
- 2. Respondents admit that part of Paragraph 3 of the Complaint in that Michael J. Tully, Jr. is a member of the Town Board of the Town of North Hempstead and deny each and every other allegation contained in said Paragraph 3.
  - 3. Respondents deny each and every allegation contained in

Paragraphs 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the Complaint.

4. Respondents admit that portion of Paragraph 6 of the Complaint which alleges that a public hearing on said project was held on May 10, 1972, and deny each and every other allegation contained in said paragraph. A copy of the minutes of said hearing are attached hereto and marked Exhibit "A".

#### DEFENSES

5. Respondents restate and reallege the facts constituting the Answer contained in Paragraphs 1 through 4 above as though set forth in detail herein.

#### FIRST DEFENSE

6. The Complaint fails to state a Cause of Action upon which relief may be granted by the Court.

#### SECOND DEFENSE

7. The Petitioners herein do not have standing to bring or appear in the above action in that they are not aggrieved parties, have not suffered any damage or demonstrated any potential or anticipatory damage.

#### THIRD DEFENSE

8. Petitioners are guilty of "laches" in the prosecution and commencement of this action over one year from the date of such public hearing and over one year from the date of the First Respondents' legislative enactment on June 13, 1972 concerning said proposed housing project which laches should in equity bar petitioners from maintaining this action. A copy of the minutes of said hearing are attached hereto and marked Exhibit "B".

#### FOURTH DEFENSE

9. Petitioners have failed to demonstrate the requisite standing to entitle them to injunctive relief. Insofar as this failure exists, the proceeding herein then must be construed as a proceeding against a body or officer pursuant to Article 78 of the New York Civil Practice Laws and Rules. The action is barred by the failure of petitioners to bring the same within four months of the definitive act sought to be reviewed.

#### FIFTH DEFENSE

10. Petitioners failed to timely comply with the provisions of Title 42 U. S. C. 20000, et seq. and the rules and regulations adopted by the United States of America to implement said law, to wit: 27 Fed. Reg. 11527, 24 C. F. R. Section 1.7-1.11. This failure and any alleged waiver thereof is not binding upon or applicable to the First Respondents. The action herein was improperly commenced and non-timely filed as to the First Respondents and should be dismissed.

#### SIXTH DEFENSE

parties in that they are not now associated with the Town of North Hempstead in a governmental capacity, with the exception of the Respondent, Michael J. Tully, Jr., or that if associated with said Town government, their functions consist of ministerial or non-legislative activity.

WHEREFORE, FIRST RESPONDENTS, and each of them, demand judgment dismissing the complaint, together with costs and disbursements of this action.

RICHARD J. OSTERNDORF,
Counsel to Francis F. Doran,
Town Attorney of the Town of
North Hempstead
Attorney for First Respondents
Town Hall, 220 Plandome Road
Manhasset, New York 11030

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John Board Festing June 18, 1972 19.30 c. m.

Notice of hearing was read to consider the Gruen Rom well Plan for the Neighborhood Daveltoment Fragram - Spinney Hell Project.

THE SUPERVISOR: Is the applicant present or represented by counsel?

Good morning, Mr. Gartner.

CIR. GARTNER: Bernard Gartner, Chairman of the Atlant of North Hempstead Urban Renewal Agency.

Mr. Supervisor and members of the Town Board and laules and gentlemen who are present:

I am here in the capacity as undirem of your train kenewal Agency to present to the moore for their existence tion of this public nearing an approval of the Saine y and Orban Renewal Project or, at least, of the initial mass set it.

My function will be primarily to give a rather print view of this project, and Mr. Hector Gayle, our executive director, who is also here with his staff will go into the specifics of the project and as required both by law and by your own requirement, will be more detailed than I will be.

My presentation will be simply a little bit of the background and also to urge upon the Board its favorable consideration of this project.

Those of you who have lived in the town for a long period of time are aware of the history of Spinney hill, its problems, and the overwhelming head that has another for at least 25 years for clearance and removal of this blighted area. The past history includes the creation of a Great Neck Regional Planning Board as long ago as long at which time, the Board applied for and received a grant from the federal government to make some study of this area.

In 1965, the planning firm of Raymond & May Associated was hired and at that time they submitted to the Ragional Planning Board a portion of their report covering Spinney

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Hill and its problems. On pages 55 to 62 of that report, they discussed the problems, and suggested methods of in-provement for the area.

That study recommended a critical need for an Urban Renewal Project and included a requirement for the realignment of Northern Boulevard or, at least, a recommendation for the realignment of Northern Boulevard. As a result of that study, and in 1966, the town and the village of Thomaston submitted a joint application to the four-ral government for funds to redevelop the area, and a survey and planning application for this Urban Renewal Project as submitted by our agency in May of 1968. That application fell into limbo by reason of the uncertainty of the state's plans regarding the possibility of an overbass on Northern Boulevard. Some of us hare today remember, and I'm sure the Town Board does, the controversics and difficulties that arose at that time. As a result of that controversy as to whether there would or would not be an overpass on Northern Boulevard, the federal government than delayed consideration of the application, and it wasn't until April of 1970, that the state finally abandoned its plans for the via ducts so that some more viable problem could then be undertaken for Spinney Hill.

In 1970, in July, the Department of Housing and Urban Development invited our agency to resubmit an application for survey and planning for Spinney Hill, an area comprising approximately 30 acres. The application was resubmitted in October of 1970. After a great deal of work in August of 1971, we were advised by HUD that unfunded applications were then being returned to the respective communities because of the lack of funding, and we were advised, and it was recommended, that we would discuss with hUD the most bility of adopting or adapting, I should say, our urban Renewal Project to what is known as the Neighborhood revelopment approach to urban improvement and redevelopment.

A neighborhood development program is a development of a project in stages. There are smaller grants which ar made in each of these stages so that the project can be commenced, and instead of obtaining the project for the entire project, we proceed and go step by stap.

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Consistent with that approach, in April of this wear, a Heighborhood Davelopment Program application for J.D.P. for the Spinney Hill area was submitted to HUD with a request for \$1,400,000.00 in federal funds for preliminary planning and land acquisitions for 8.5 acres of which 5.3 acres are to be used for housing. A portion of this land is slated for construction of somewhere between 100 to 120 units of moderate income housing.

Let me stress the use of moderate income housing, at the risk of some repetition. Our agency has come before you on previous occasions, and I refer specifically to our Roslyn project, and make it clear that a Urban Renawal Project, and particularly, our project calls for moderate income housing.

That is what is being proposed, as you will hear from Mr. Gayle, on the initial stage of this project.

We have brought with us renderings and outline maps showing the area that is proposed and, specifically, taking sections that we propose to proceed with initially. When Mr. Gäyle makes his detailed presentation, he will give you those details of how we propose to take in the stages that we will take.

Now, generally speaking, we propose to proceed with this project in four stages over a five year period. The planning will include garden apartments, new one and two-family houses, shopping facilities, and a community center. The cost for the entire 31.4 acres project, from beginning to end, is anticipated to be somewhere between eight and ten million dollars. These funds will be obtained, two-thirds from the federal government, with the state and the town sharing the difference on a cne-third basis.

The commitment, of course, that is being asked of the town at this time, so that there is no anticipation of heavy commitment from the Town Board, is overall general approval of the project together with initial approval of stage one. In the second or third phase of the project, it will be an additional 75 units of housing constructed on the northern side of Northern Boulevard. The first group of housing will be on the south side of Northern

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Boulevard, so that ultimately, there will be a total of 175 units of moderate income housing.

We now have in the Spinnay Hill project area, by careful research and investigation that is required by the functional government, 140 families and individuals who will require relocation in the new housing and in one and two-family homes slated for the area, so that, generally speaking, there will be an excess of only 35 units available for others than those who live in the area.

I simply want to conclude this brief overview, dr. Supervisor --

THE SUPERVISOR: May I ask you this: Regarding the 35 in excess, when you use the obrase "in the area", are you speaking specifically of the area involved in phase on: and phase two?

MR. GARTNER: No. The entire project area, .r. Supervisor, calls for relocation of 140 people.

Phase one of the project will call for construction of about 100 units. Ultimately, we will construct 175. If phase one will have the need, probably the relocation is 100 families. There will be eight displaced families in the first year.

ment that the excess of 35 families could be provided by the community of North Hempstead?

MR. GARTNER: Well, I assume so, yes.

Of course, now I have to add to that the fact that we're dealing with a project that will take three, four years. In our present statistics, the answer is yes.

I simply want to conclude, Mr. Supervisor, by replating what is sort of obvious to this community. It's been a long history in reaching the point at which we are now. The need is critical; it has been critical for half a generation. The meeting that was conducted successfully. I think, before the Planning board, demonstrated the voices of the community who spoke most aloquently and desperation.

0 va comia coting dino 14, 1972 10:30 c.m.

if that's the word -- for the need for decent nousing in this area. The people who live more days lived that dear the most deplerable conditions for many, many yield have brought their children up there under these conditions, and are delighted new we submit a program and a project which will provide with decent, safe, and adequate neusing in an area that sorely needs it.

I'd like new, if I may, Er. Supervisor, to call usen ir. Gayle who is the executive director of the agency will be more specific and who will turn his attention to the required details of the housing.

Thank you, Er. Supervisor.

THE SUPERVISOR: Thene you wire indea, or earth r.

Good morning, Mr. Gayla.

Town of North Hempstead Urban Renewal Agency.

Good morning Gr. Supervisor, members of the Beard, 1-11 and gentlemen.

I have before me an 18 page presentation, and this presentation was read at a gublic nearing. With the Board's permission, I would like to summarize this 18 page presentation. I will make it as brief as I possibly can, so we can alot time for questions and answers, at the same time, not omitting the important parts or the presentation.

There are copies of this presentation available. It will be available in the clerk's office, and we have a few here if those who have missed the presentation at the Planning Board and would like to get the complete prison tation.

I appropriate the opportunity of appearing before the Town Board and the people of the Town of North Newpatead, particularly the residents, business people, and any others from Spinnsy Hill, to discuss the Orban Renewal Project for this area.

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The purpose of this hearing, which is required by law, is to present to you the avidence of blight to a degree warranting urban renewal, the details of the urban renewal plan and our relocation plan for families to be displaced.

As you can see from the maps which we have on exhibit here today, the project area is rather irregulariy shaped and not very large. This is the boundary we're talking about.

For the overall N.D.P. area, the northern part consists of a row of commercial, residential, and mixed use structures extending back to the boundary of the villeg of Thomaston, located on the north side of Morthern held vard and the west side of East Shore Road, running from Schenck Avenue to a point on East Shore Road midway between Northern Boulevard and Mitchell Avenue, which is apto the site of the new senior citizens' housing.

The southern part consists of everything north of the public housing site on Pond Hill Road and south of Morthern Boulevard from Allen Drive to Community Drive, excluding several large vacant parcels and the small public housing project on Community Drive and High Street and the corner of Northern Boulevard and Community Drive. The NDP area includes a row of six houses for possible rehabilitation on the west side of Allen Drive extending from the northern boundary of the public housing up to Northern Boulevard, but also a row of commercial and mixed residential structures which front on the south side of Northern Boulevard from Clark Drive to Allen Drive.

The Action Year Area consists of the properties on Cherry Place and Brook Place, both of which will be closed, plus one house and a vacant property directly north of the community center, a vacant tract on Community Drive, and part of the yard of the community center property.

For this project area, which I have outlined, there are two types of urban renewal treatement proposed. They are clearance under which our agency buys the most deteriorated structures, has them demolished, and provides cleared land to be used for the development under the Urban Renewal Plan, which I will present to you shortly.

Power 1: Wown Board Mostine, June 13, 1972 10.30 a.m.

The second type of treatment is massilitation, where we structures remain where they are, but will be minable tated by their owners according to a reasonable and 111-ful system, which I will also allocate in obtail today. Those properties which are subject to minabilitation, are labeled "property not to be acquired" on the boundary map. They will minable in their todation, but will be added just to the codes and prolinences of the Town of Sorte Hompstead.

I would like to start this resultation by vacrious the characteristics of the entire like project area vitalia the boundary that I outlined, 31.42 gross acros, of which 10.5 acros are used for stracts. If a deduct their same age, this leaves a net project area of 19.72 acros, of which 2.20 acros is made up of properties that were classified as non-residential uses of lead. These are the positive across along perthana sculavary and flast phone head. There are used screen classified as residential properties or prodominantly residential miner uses for nousing.

It is interesting to note that the project area is almost all built up except for some vacant property in the Action Year Area, which is our first year's program. That first year area is shown on the map behind me, contains vacant lots off Cherry Place and Brook Place, part of the yard of the community center, and prior to this, a relatively large vacant parcel of land belonging to Ut. Olive Suptist Church.

This property of the Mt. Olive Baptist Church is slatted, and you will see it on the map marked inct to be acquired. This decision was made in consultation with the Mt. Olive Baptist Church, the Town Supervisor, the Chairman at our agency, and the federal government, at the request of the Mt. Olive Baptist Church. That portion of land will not be acquired by the agency, and it will remain for the use and development by the Mt. Olive Baptist Church.

Of the 75 buildings in the project area, at least 60 or 80 percent have some type of serious structural deficiency, either critical defects or combinations of intermediate defects that warrant treatment. The other 15 include the

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six buildings, some of which also have defects that are correctable, that comprise the rehabilitation strip on Allen Drive's west side, the neighborhood community center, and 8 other buildings which have defects that are less severe.

This means that more than 60 of the 75 buildings in the project area have some deficiency which range from slight, or those that are easily corrected, to critical, or those that are so extensive that the clearance of the building is either justified or warranted. Many have 4 or more defects that were classified as intermediate which are equal to a critical defect.

Before making any decision on any building, we conducted several surveys of all structures. This was the basis for our decision to clear or retain buildings in the project area.

A plan for the redevelopment of the project area has been prepared; it is on exhibit here, and entitled 'Future Use Plan for the NDP Area". This comprehensive redevelopment plan includes some street changes and an appropriate re-use of clear project land for housing and shopping facilities. The future use plan integrates the ranabilitation properties with the new uses of land. According to these future use categories of land, our re-use plan will consist of:

residential re-use areas: will be a total of 11.57 acres distributed in two areas; one amounting to 3.4 acres is on the north side of Northern Boulevard, east of Schanck Avenue; the second area in our Action Year Area, between Allen Drive and Community Drive, amounting to 8.17 acres.

If you deduct the 3.7 acres of the Mt. Olive Baptist Church, that leaves us with the 5 acres that will be used for the first action year.

The commercial use area will be a total of 7.7 acres distributed over four locations:

One. A long strip of 4.3 acres fronting on East Shore Road, which is being considered for a neighborhood

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shopping facility to serve the Spinney Hill residents.

- 2. The other three commercial parcels on the south side of Northern Boulevard, and amount to 3.4 total acres.
- 3. The site for a neighborhood facilities centur as presently shown amounts to 1.3 acres.
- 4. The streets will consume 9.36 acres of the gross project area.

This brings our gross project area to 31.43 acres.

The area is considered blighted and eligible for clearance and redevelopment on the basis of nUm's criticia. Our findings on blight and this project's eligibility, are based on two sets of conditions. One has to do with deteriorated buildings, the number and their distribution within the project's boundaries and the attent of their deterioration; the other has to do with environmental deficiencies which are present to a degree, and in combination with the deteriorated buildings, to cause the project area to be a substandard place in which to live.

Of the total 75 principle buildings in the project, 60, or more than 30 percent, were classified, according to the federal criteria, as structurally substandard to a degree requiring clearance. There are also environmental deficiencies which are present and which compound the problem of structural deterioration.

Those deficiencies are: There is overcrowding or improper location of structures on the land. There are at least eight instances of more than one principle structure on a small parcel of land. For example, at the northeast corner of Schenck Avenue and Northern Boulevard on a parcel of approximately 19,000 square feet, there are six structures, a mixture of one family dwellings, a commercial structure, and a mixed commercial residential structure. At 65-73 East Shore Road, on a lot of approximately 11,850 square feet, there are four structures of mixed commercial and residential use. At 999-1005 East Shore Drive, there are two structures, one containing a

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furniture store and a one family dvelling mixture, and a second commercial structure containing three stores. Another example is located on the southeast corner of Allen Drive and Loren Hemospace Turnburg. There is a flag shaped parcel approximatily 14,000 square flet which contains three structures, ususing an aggregate of at least six families.

The lots containing stores have insufficient area for on-site parking and locating facilities. The spill over of cars and trucks intensifies the condition of overcrowding.

There are some cases of excessive swelling unit usersity. One contains four families, a car, and a taxi office.

The mixed new structures I have just discussed area contain excessive availing unit densities.

There are some examples of conversions of structure, originally designated for one family use unica are now used as rooming houses. Others are used as rooming houses without the benefit of conversion, causing sir ious, deficiencies in bathroom and bitch in tacilities. The prevalence of illegal rooming access is a major characteristic of the area.

There are cases where the structures are so and/blighted that they exert a deleterious influence on adjoining properties. At 97 and 931-935 East Shore Read there are examples of this condition. On the south-east corner of Allen Drive and Northern Boulevard, there are also mixed use structures which are badly deteriorated, especially on the rear and side walls where they atfect adjoining properties due to the closeness resulting treat their undersized lots.

Detrimental land use conditions and incompatible land use combinations characterize the project area. There are one family houses and other residential properties fronting on major traffic arteries, a condition which should be corrected. These are interspersed among heavy commercial establishments, many of which are

Taur 1: Tour Liard Stine Sun: 13, 1972 13:30 S.m.

automotive establishments, and generally described to the serious truffic condition. These thornes in automotive parking lot, a marine sales and that storage establishment, a storage establishment, an auto parts sales establishment, a storage and i alle shop, a fuel oil distributor, several take offices, and other commercial establishments, such as calinet shops, plumbing and meeting contractors, union a rt included comparable to those of light incustrial establishments.

unsafe and deficient streets, especially mighter major traffic arteries such as northern deulevard, or attached traffic condition which procludes the continued as attached the street's frontages for residential up execute to the street.

These relevable was that if the solution of the second of the cream of the plant, which is a relevable to the cream of the plant, in its final office, who cannot remark a reaching the second of the cream of the cr

Lat's start with the land us has description with the indication of where the Action Year is.

As shown on this boundary map, the action year, which is the first year's program, is the area in blue with the exception, again, of that area of Mt. Olive's erep ray.

The Action Year, of first year's area, is for one as residential, as shown in yellow on the map. The section that is colored yellow is for residences, again, distributed exception of the Mt. Olive property.

he described in the text of the plan, the we made; be limited to garden type, row or town house multi family residential structures and their accessory uses, such as garages or other on-site parking facilities and recreational facilities for the residents on the site.

The Urban Renewal Plan consums other controls for the proposed residential resuse proporties. They are:

The number of dwelling units shall not exceed 24 dwelling units per acro, which is the density allowed in the town at the present time for multi-family uses.

The bulk: The building bulk shall be minimized by the provision of adquate yards union will provide some useful open space as well as liber the air for the occupants. The developer must adhere to the town zoning ordinance as to yards, bulk coverage, or other elements which are not specifically stated hims, but which are contained in the R-H zone in the Saning Ordinance.

Off street purking acileates that is proved that a rate of one and one purrier of sold acades for each dwelling unit. Consideration sold be given to the sixt of the residential units so that the number of paralog spaces on the sixt will serve the total domain. As indeed, space shall be at least 10 feet wide by 20 feet long.

For the commercial rause, the trian Renewal Plan requires that the use shall be limited to neighborhood type of rotail commercial facilities which cenerally serve the daily needs of a residential neighborhood with convenience goods and personal services. Control rotail commercial land uses shall also be permitted provided that these establishments are located on Northern Boulevard and will be compatable with the other uses permitted by the Orban Renewal Agency. Accessory uses such as signs, one-site parking and leading facilities and their service grives shall also be permitted.

Prevention of air and water pollution: "Inclinational commercial establishments permitted shall be of a type that will be compatable with the residential land uses in this neighborhood. Specific establishments whose operation over cause air or water pollution shall not be permitted.

Land scaping and screening shall be provided wherever a ratail commercial use abuts a residential one. Planting, a fence, or decorative block wall, having a height of at least four feet, may be used for this purpose.

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The Urban Renewal Plan also allows semi-public session the NDP area, specifically, a church in the 20 ft that neighborhood churches such as the St. Olive Bardist Church wishes to expand its facilities or build a new on on a larger site in another location within the NDP area. For the semi-public land uses, the orban Runewal Plan requires that the use shall be limited to inderporated places of worship, their accessory structures and related rights tion facilities. Such accessory uses as signs and offestreet parking facilities shall also be cormitted.

Those are the contemplates future uses of land for the MDP area. I would now like to discuss the urban renewal techniques which will be true to assist that objectives of the Urban Renewal Plan; there are two.

Number 1. Clearance and red velop into Clearence and redevelopment is footral terminology for buying, decomining of properties in substandard condition and to sall of those "cleared" properties to redevelopers for the eroposed uses and relevant controls that I just read to you. A redeveloper can be a private company, a bublic be you such as the Town of North Hempsteed or Massau County, in a non-profit citizens organization can also be a redeveloper especially for housing.

Number 2. The other urban recoval technique is rehabilitation of existing properties, their treatment applies to one area containing the six houses on the wast side of Allen Drive that I excluded from clearance a moment ago. Rehabilitation treatment will be considered for any of those houses that appear to need some upgrading or improvement after a detailed interior and exterior survey is made of them.

Where property is earmarked for rehabilitatio, and to owner is unable or unwilling to undistant that work, to Urban Renewal Plan enables this Orban P newal Agency to acquire that property to rehabilitate it according to the standards contained in the Orban Renewal Clan.

The brban Renewal Plan contains a number of design objectives that will be used as standards and controls for a qualitative review of the site plans which will be

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remaitted by redevelopers. These wesign objectives, are all facets of redevelopment. They cover building, surests, sidewalks and open segoe, off street parking and off street loading facilities, landscaping, signs, project improvements.

The Urban Renewal Plan contains other provisions which are provided to make this a stable project. They include:

Number 1. Duration of the controls, union is a 30 year period from the time that the Town Board approves the Urban Renewal Plan.

- 2. Provisions for amending the Orman R newal Pean which require concurrence of the Town of Worth Height-ad. HUD (the Paderal Department of Lousing and Urban Devilopment) and the written consent of developers who have already developed property according to the plan.
- 3. A proposed time schedula for effecting the order Renewal Plan is based on HUD's quidelines for ADP projects where the Action Year is the first year which is scheduled to begin July 1, 1972 and end June 30, 1973. Therefore the acquisition of property and the relocation of any occupants of the property should begin immediately upon HUD's approval of our application on or before July 1, 1972. The selection of americal entirely will take place simultaneously with the acquisition activity and redevelopment starting immediately after this. Redevelopers will be required to complete the redevelopment of the Action Year Area within a definite and reasonable time period which will be determined by the Urban Renewal Agency and will be incorporated into the contract of sale.

This next part of my presentation will be a discussion of our agency's program for the relocation of project families and individuals.

We have relocation personnel who are trained and the perionced in the federal requirements, and from their replocation activity from our first project in hoslyn. We have found a feasible method of relocation for the two families (of two persons or more) and the eight individuals

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who will be displaced by our adjuisition and disprance of the properties they are presently living in. What's in the first action year.

The remousing needs of all of the families and the individuals to be relocated have been surveyed and car fully determined by detailed recent interviews to enead lish the sizes of the families and consequently, the name bar of bedrooms each family will need, as well so their ages, incomes, and preference for private or public remeal or sales housing in the future. Each family and in dividual will be interviewed again at the time that their property is acquired to insure that any changes in the family emposition or income that may have taken place since the last survey, will be recognized and proper relocation resources can still be provided.

During the first, or Action Year, a moderate income scusing project of at least 100 and possibly as many ac 120 units, will be constructed on the land to be acquired, which is mostly vacant. There are five acres of land in the first action year for housing that give us 120 units, and we are contemplating to build approximately 100 units. This will be used to relocate people in later stages of the project. Should a displaced family or individual desire to move outside the project area elsewhere, they will receive the same relocation benefits and assistance. Dis placess will be rehoused in either new nousing on our first action year site, or in existing decent, said, and sanitary dwellings, mostly within the Spinney Hill area, or in units alsowhere in the town that are not less casirable in relation to utilities and community facilities and that are priced within their financial means.

We are authorized to pay moving expenses or fixed dislocation allowances according to the federal statutes, to provide settlement costs, and to make replacement housing payments; to assist in the acquisition of document, safe and sanitary dwellings to families and individuals who are displaced and not relocated into public housing or other subsidized housing.

The amount of the replacement housing payments (known as rental assistance) authorized for tenants, is based on

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the difference between the average montaly rental required for decent, safe and sanitary housing of nodest standards, and 25 percent of the monthly income of the displaced family or individual.

That total rental assistance payment authorizs. is the amount of the money required to make up this difference for a period of four years and it cannot exceed \$4,000.00. A payment of up to \$4,000.00 may also be used to assist a tenant with a down payment one house if no elects to purchase. While there will be no dislocation of home owners or businesses in the Action Year, there will be in the reservation year. These are all clinical for payments.

There are replacement housing pivo ats for as in an amount not to exceed \$15,000.00 for a comprehence of a dwelling acquired by the agency. This amount is in addition to the payment that they will receive for their property. This includes a differential payment, which is the difference between the value of his old house, and the price of the replacement house; an interest payment which compensates the home owner for loss of favorabl financing; and an incidental expense payment which is for costs, such as legal, closing, and related expenses; land r FHA or VA appraisal fees; sales or transfer taxes, and to like. If possible, the payment will be made at closing or upon entering into a contract to purchase. Our agency will exert all of its means to assist those business concerns which will be displaced in working out an orderly and con venient plan for the relocation of their businesses. . ' have met with the representatives of some concerns and advised them where some land will be available to them for their type of operation in the Dusiness sections of the project area. We are authorized to make relocation to ments to business concerns for all actual, reasonable moving expanses, actual direct loss of property, and actual reasonable expanses in searching for a replacement Justa

Alternatively, the business may receive a payment in lieu of moving and related expenses equal to its average annual net earnings, but not less than \$2,500.00, nor more than \$10,000.00. As execution activity proceeds, if you have any questions regarding relocation natters, pleasi

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come to my office to discuss them with my or my relegation staff.

In conclusion I would hike to point out two drawings we have of the area, and these are renderings of the development that will take place in the Roslyn area, and wanticipate that this will be the same type of devalopment that will take place in the Spinney Bill area. The units are three story units with an allowator in each building, with individual pation, with a community facility downstairs for either day care facility or nurstry facility, with a depressed top lot for the young children, with a tennis court and a basketball court and a swimming pool. This is the development that is projected for the Poslyn area under the same program that is contemplated for the Spinney Hill area, and we anticipate that this very same development will take place. This is the type of luxury facility that we are discussing here today.

The basic reason for redevelopment of the Spinney Hill area, generally, and Urban Renewal Plan which wa presented today, is the provision of standard housing for all the residents within the area in an improved environment. This involves both the elimination of the substandard buildings and relief of overcrowding. In addition to new housing construction for families of moderate income, a part of this plan includes the rehabilitation of several homes on the west side of Allan Drive in order to insure their preservation. Unfortunately, we must take several structures which are not in critical condition for planning purposes in order t achieve a redevelopment of the area which will meet the goals stated above. All urban renewal activity will .. staged according to the requirements of HUD's NDP quid: line, over an extended period of time, so that this plan can eliminate the bulldozer approach and provide for the satisfactory rehousing of each family and individual bifore demolition of their structures can take plac. Where a property must be acquired and demolished, the fair market value will be paid to every owner.

The small amount of rehabilitation we propose is playined to fit within the financial means of the nome owner who will be helped by low interest urban renewal

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loans or outright grants-in-aid in some cases where the family income will be too low to undertake rehabilitation work. Our staff will include a rehabilitation specialist who will work with each owner. We are also fully aware of the problems facing those business concerns which will have to relocate, and I wish to assure them that the Oreban Renewal staff and the Small Business Administration of the federal government will dooperate fully so as to minimize these problems.

Once the new buildings are constructed and the rehabilitation work substantially completed, the public improvements, and the displaced residents of the area are properly housed. I am sure that you will gree that the Spinney Hill project area will semonstrate that order Renewal can transform an older declining community neighborhood with substandard housing into a healthy, attractive, and suitable environment for those residents who have roots here and wish to continue living here. They have waited patiently since 1966 for this necessar, ordess to begin. I hope that this time, our program will really succeed.

One other element that I forget to mention in tals redevelopment plan, and this is of concern to the town and to the environmentalists and ecologists, is that in this complex there will be a compacter unit. In other words, there won't be garbage cans or garbage stations. The garbage will be but down chutes, and it will be compacted down in the basement and all scaled up.

I have endeavored to furnish you with all the infer mation portinent to the Spinney Hill broam herewell respect and the necessity for the redevelopment of this part to the town of North Hempstead.

I would be remiss if, at this time, on bench of the agency members and staff, our recognition were not given to the many residents of the Spinney Hill community and have worked tirelessly and unal heartfuly in the residention of this Orben Removal Plan for the revitalization of this community for a very long time.

Then there takes Sunt 13, 1972 10,50 c.m.

Pacognition should also be given to the unbjustability of cooperation found in this community as exemplify the formation of the Tri-Corp Planning Organization, on sponsored by the Mount Olive maptist Church, the Manhason Interfaith Council and the Manhason-Great Nack Community Coalition Corporation.

Special mention should be given to the Manhasett Great Neck Community Coalition Corporation, the Lague of Menhaset-Great Nock, the Manhaset-Great Nock, the Manhaset-Great Neck Economic Opportunity Council, and the various civic associations of the neighborhood, the churches, the governments of the town and Massau County, and the Massau County Planning Commission for their are and guidance, and to our consultants and other specialists.

Last, but not least, recognition should be given to the Town Supervisor and the Town Board for their full co operation and support extended to this agency and, in particular, to the project.

That's the end of my report, Mr. Supervisor. I thank you.

THE SUPERVISOR: Thank you very much, Hr. Gayle.

If we have no further presentation from the agency or its director, is there anyone present who wishes to be heard in regard to this particular proposal?

MR. SUROWIEC: Richard Surowiec, 51 Manhasset Avenue, Manhasset.

My question is directed to the Town Counsel. Pirst of all, I'd like to know what sort of impact this will nave on our taxes, not only as for as town taxes are concerned, costs of all the properties that are taken off the tax rolls, but also as far as how many more children are going to go in the school district.

This is the whole thing, as far as I'm concerned, because the rest of the stuff that they presented, we all know about. This is what I would like to know.

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THE SUPERVISOR: Mr. Gayle, would you like to respond to that?

MR. GAYLE: As I understand, the question concerns the school taxes and the number of school children and the impact of the school on your taxes.

We have a great deal of the actual and proposed taxes here. The actual tax for the entire area --- right now, just the commercial area --

MR. SUROWIEC: You can't say that.

MR. GAYLE: Let me finish. The actual tax for the entire area, the entire area, is \$145,000.00. The actual assessment for the entire area is \$811,500.00. The projected tax for the commercial area alone was \$208,000.00; that's the projected tax for the commercial area alone, which is more than the entire tax that is being paid right now.

The projected assessment for the commercial alone will be \$1,163,000.00, and this is all computed by the County Tax Department; these aren't my figures.

As far as the impact on the school is concerned, we have an absorption capacity projection here, which projection was prepared after studying the plan of the Manhasset School District. The number of multi-family units that we propose is 175. The number of families living in the area right now which will be relocated is 140. So these children that are here right now, are going to the school.

The number of units available for non-residents, or additional people -- and it may be that the very same people who are living in other houses in the area will be living there, but suppose they're coming from other areas of the town -- are 35 extra units.

The statistic base used by the Nassau County Planning Commission and accepted for amounts to 0.27 per child per unit of apartment. If you multiply that by 35, you will get 9 additional school age children that the project will

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generate into the Manhasset School.

According to the Manhassat School figures, the report on an overall basis, taken as a motal, reflects a slight decrease in school population projected over the next ten years.

Does that answer your question?

MR. SUROWIEC: Not really. You say that there is less than one child per apartment. I can't believe that. You go down there to the houses; you can't tell me they have one child per family.

MR. GAYLE: I dign't say that. I said that the children that are there right now will be going to the school; well, be projected going to the harnasset School. They are living there right now and they are going to the Mar usset School.

We are proposing 35 units of housing, more than what is there now.

When you use it on the statistical base you multiply the projected number of children, school age children, per area, that will come from those 35 units, you only have 9 additional units. If you project one child per unit, you will only have 35.

MR. SUROWIEC: Thank you.

THE SUPERVISOR: Yes, sir?

MR. CARTER: William Carter, 18 Carr Driv. Great Neck.

I heard Mr. Gayla. Somebody coming from Carr Drivwe have a church there, a Baptist Church. What confusion
coming down a little further. I have a business place
there. We got a grocery store there, and a beauty shop.
cleaners and a little small ber, along that line. That's
what I'm worried about, whether I can re-evaluate that
and make it come up to the requirement of the Orban Renewal.
or what's going to happen to me there. Those people will

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continue with their business; they ask me. I don't know. They don't want to be pushed aside, moved out. Somehow, that's what I'm interested in.

I say this, I'm a builder around here in this community, came here in '28, and I've been around here. I've been treated all right, built houses, I pass inspections, they never was torn down. So I wonder how they can arrange this here. I want to see these folks continue their business. I don't think they should be pushed aside.

They come to me, not because they are white or black, they want to carry their own. They ask me. That's what I'm interested in. I'm too old to do much of anything, but I do have a son coming on; he's cursed at. he wents to know what we can do about that. I don't want nothing put away in Urban Renewal. I want to know, can we develop that.

I say to black folks -- I call myself black -- I den't go along with that.

THE SUPERVISOR: Mr. Cayle, would you reply, first to the portion with the church, and secondly, to the commercial question?

MR. GAYLE: The church is in the rehabilitation area. The church will ret in there.

COUNCILIAN MARTIN: The Baptist Church will remain there?

MR. GAYLE: Yes. As a matter of fact, Mr. Carter, when the Baptist-Church requested of the town an approval of their plans to build requiring a variance, they came to us, and we wrote a letter to the town, asking that this variance be given to them because, in the future, orban Renewal Areas will take into consideration that they will need parking spaces, and so on. So the church is going to remain there.

As far as the businesses are concerned, Mr. Carter, I think I met with several of the businessmen on Northern Boulevard, the black business men, at the EOC office, and I think I met with you. I pointed out that the first

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priority will be given to the businesses that are there right now. There will be stages of redevelopment. It won't be torn down all at one time, and there will be stages of redevelopment. The priority to continue in business will go to the people who have businesses there right now, even in conjunction with them developing their own business, if they have the money to do that. If not, they will be given priority in the business that will be built by others, but they will be giving priority to the people that are there right now.

MR. CARTER: Sounds good.

THE SUPERVISOR: I have a list of persons who wish to speak. I will take them in the order. The first one is Mr. Robert Rivers, Esq., speaking for the Great Nack Manor Civic Association.

MR. RIVERS: Robert Rivers, Esq., Great Neck Manor Civic Association.

Good morning: I'd like to point out that, again, Mr. Gayle avoided the subject of racial concentration or racial composition of the proposed area for the Urban Renewal site. Mr. Gayle never referred to the study that had been made in 1965, and that study --- I refer you to page 58 -- indicates non-white representation 71.4 percent of the people interviewed.

Since the survey was conducted on a selected, rather than a rampant sample basis, it could be assumed that this represents a fairly accurate approximation of the portion of the non-white population in the studied area.

We can conclude from that that there has been an increase in the racial concentration in the Spinney Hill area; and it has been avoided completely by the report of 18 pages which was introduced by Mr. Gayle.

Now, I have a draft of a statement by the Great Neck Manor Civic Association which I am going to read:

"In light of the recent distorted news account of the position of the Great Neck Manor Civic Association as it

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relates to the proposed urban renewal project for Spinney Hill which seeks to place black against black, and in an attempt to make the position of the civic association clear we must preface our remarks by indicating that the Great Neck Manor Civic Association acknowledges the critical need for housing and housing developments, not only for the town of North Hempstead, but for the entire County of Nassau. Further, the association recognizes that this need exists not only for moderate and middle income housing, but for low income housing as well.

Historically, this civic association was in the forefront of an attempt made to develop the Lake Success buffer area for one-family homes instead of industry. That battle was lost because the need for housing at that time was less obvious to the town fathers.

The Great Neck Manor Civic Association supports housing, however, the Great Neck Manor Civic Association is opposed to the current Spinney Hill urban renewal project on the grounds that as presently constituted it represents an expanditure of federal funds for the purpose of bringing about black racial concentration contrary to federal guidelines, contrary to the Civil Rights Act of 1964, Title VI, and contrary to the enlightened concept of scatter-site dwelling. That on its face as presently constituted, the plan is prima facie, at variance with the national neusing policy, and will bring about an increase in racial segregation.

The basic inquiry of the Great Neck Manor Civic Association is to determine from the town what means and what proposal and what realistic approaches have been taken to acquire non-segregated sites within the town for the purpose of building low and moderate income housing of an equal potential as that which is now proposed for Spinney Hill.

Upon the failure of the town to meet this prerequisite it is the determination of this civic association to take every step legally necessary to stop the colonization of black people."

(Applause.)

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THE SUPLRVISOR: The maxt speaker I have is Mr. Daniel Mercwitz.

MR. HOROWITZ: Daniel Horowitz, Esq., Ar. Tully, members of the Board:

Pirst, allow me to congratulate Mr. Gayle on a very, very good prosentation. To attempt to take the presentation point by point, will take us all day.

I represent one of the property coners whose property abuts both on Northern Boulevard and on Allen D. 78.

I live in the Town of North Hempstead. I am pretty well aware of the Spinney Hill problem. The Spinney Hill problems will not be sattled by this particular development. We have many sites in the Town of North Hempstead that are available for public housing; be it moderate, be it low income, be it high income, and I think this Urban Development Board, in attempting to set this housing in Spinney Hill -- and I want to repeat what Mr. Robert Rivers just said -- is that it would attempt to concentrate and bring these people into closer proximity to each other.

I think that this entire thing should be rethought. As far as the question here on the tax basis, it is within the powers of this Board to recommend what it has to do to rehabilitate the Spinney Hill area without tearing it down. The tax base can be lifted, if the Board uses the power.

THE SUPERVISOR: Mr. Horowitz, did you speak individually or representing one?

MR. HOROWITZ: I represent Mr. Curry, and I speak as a taxpayer, individually. Thank you.

(Applause.)

THE SUPERVISOR: Ars. James Jeffers, a property owner.

MRS. JEFFERS: Mrs. James Jeffers, Spinney Hill Drive, Town of North Hempstead.

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Mr. Tully, and members of the Board: I'm a property owner in the Spinney Hill area, although I am living at present in Queens. I hope to build a home in the Spinney Hill area on my property. I checked against the project on the form, but I reserve the right, the woman's right, to change my mind.

I really am present, primarily, to get information. I am not as well informed as I would be if I lived in the area.

However, because I am a public school teacher in Queens, and A licensed guidance council, my point of view, therefore, is perhaps a narrower one than those of others present. But I will speak from my own frame of reference.

I am concerned, first, I guess, about the homes of those persons who live in the area now. If these people who live in the area now and who are going to be displaced, if they are going to benefit rather than the developer, then I am ready to side with those persons who want to see the development. I am concerned for the young families that will come into these projects. It's the young familes coming in — and I'm aware of the fact that Mr. Gayle pointed out that many of the families already living here will be getting first preference; but then when I heard the tax figures, the projected tax figures, it sounded like the property could very well be out of the reach of those persons who are now property owners.

I would also make a plea for the property owner. My reference goes back to the French Revolution where the cry was "Land is power." So if the property is going to be taken from the landowner and the landowner is going to become a renter, I would first want to know, is this renter satisfied?

If the landowner is not happy, then I am voicing my protest with the property owner who is not willing to become a renter.

I must certainly add my protest if this is to become a ghetto. If in Forest Hills they have a right to fight for what they like, then, in the Spinney Hill area, we have a right for what we want.

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(Applausc.)

about children. I am going to ask, because I'm uninformed, will classroom spaces be provided for -- and I'm not talking about the 35 units that Mr. Gayle was talking about -- I'm talking about in terms of the fact that in case the present families are not the ones who will be able to rent this property, in case new families are able to rent -- who will be young families and the parents of young children -- if there is an influx of young families, will the classroom space be adequate? The tax base indicated too that persons of lower income may not be able to pay for the rental that is possibly projected here.

But again, I state this is in a form of a question recause I'm not thoroughly informed.

You talk about business. Again, I am concerned about the home owner, the property owner, who has a little barber shop. I am not sure whether this barber will be able to provide for his family because the property may provide only for the man who is able to go into a hig furniture business or into a big supermarket, and so on, and the barber shop owner, and the man who is an auto mechanic and who doesn't own a business, hasn't got a job — or will there be one provided? I don't know; I'm asking the question.

I guess, because I'm a guidance counsellor, I think about young people. And so the young baby who comes into the world needs clinical care. In Co-Op City, it seems that those who plan, putting up something as elaborate as Co-Op City, considered all these facilities of living; clinical services necessary for the new baby -- and I don't know whether clinical services are available here, but it ought to be here to take care of the new born baby.

I'm thinking about the young people, and as a guidance counsellor, I talk with many of them. I'm thinking about young people who will want to play basketball, but if his dad is unemployed, we have a sick child on hand, mcrally, emotionally, and socially.

Are these people being taken care of when we provide

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for a commercial area that may offer opportunity only to the man who has money? Mr. Gayla mentioned, I think, when he responded to the gentleman here, that the person will be given first preference who has a small business, but only if he has the money. My question is, what if he hasn't got the money? Then where does he turn?

I'm planning to build a little house. We want the best for our grandchildren. My children are grown and they are college graduates. As I look around in this office, I am wondering if my college graduates can get a job right here, because there are pitifully few black councilmen; you have pitifully few executives on an executive level, and you need them. So if these questions are being answered, and if they are being answered to the satisfaction of those of us who must live here, because I am building myself a house one brick at a time. Those of us who must live here, if we are going to benefit, then my vote is yes.

If, on the other hand, the developer is going to benefit to a greater extent than the rest of us who will be living here, then my answer is no.

These are questions, and I'm going to pursue them. Thank you very much.

THE SUPERVISOR: I think your questions are well taken, Mrs. Jeffers, and we'll see if we can get your answer right now.

Mr. Gayle, I think we can summarize the questions to three questions, (1) Will these small businessmen be provided for in that they will be able to conduct their business again in the present as they did in the past?

MR. GAYLE: The answer to that question is as I said before; he will be given priority to rent space in all and any of the development that is being put up thers.

My point i buying one, if he has the money, is combined with other businessmen in the other development on a larger complex. He can do that; he can't do that alone. If he wants a little barber shop or a candy store, or any

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other small business that he is renting right now, as can continue to rent.

IR. SUROWIEC: But if he won't get the money, that's
it.

MR. GAYLE: Now, there are also other facets to this. If a businessian wants to expand his business, there in the Small Business Administration, and you can go to a Small Business Administration and got a small business load. The arc the answers.

The Robert 1502: I think the point is being essent that if a man runs a barber shop right now and, let's assumints rent is \$100.00 a month, if the new premises are \$200.00 a month, will the same man be able to rent his barber snop, and will there be a provision made for the difference?

MR. GAYLE: I'm as honest to say that if the dry light who is developing the area, he will have to present plans to the Urban Reneval Agency that will show that the rental that will be charged will commensurate with the rental that is now in the area.

THE SUPERVISOR: Second question, I think, was. Will additional classroom space be needed?

MR. GAYLE: At the present time, no additional classroom space is needed in the area for the people who are there now, and for the 35 that will be there. There are no additional classroom spaces needed.

As a matter of fact, the projection shows that the classroom space — there will be a slight decrease in the school population. There will be no classroom space that will be needed for these particular number ofpeople that will be here.

As far as the thought is concerned that the lady had that none of the people here may be relocated and that new people will come in, well, I cannot see that happening, because we have no place for the people that are here now to go other than in those buildings.

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MRS. JEFFERS: I want to clarify that question: I want to clarify my question, because in rephrasing it, you weren't saying exactly what I was asking. I understand your figures; that if these particular families who live in the project — but my question was based on the tax assessment which I quoted a few moments ago. It seems to me — and I'm certainly not really knowledgable— it seems to me that the present families, that some of the present families, may not be able to move in, and therefore, I'm asking, if those families whose incomes are high enough for them to move into these projects, if new families bring in young children, is there a classroom space for them?

THE SUPERVISOR: That's the third question I really had. Will the units be within the range of those being displaced? In other words, have you made a survey of those who live in the area to determine what they are going to do in the future?

MR. GAYLE: Everyone who lives in the area right now will be afforded space in the dwellings, and they will be afforded space according to their income, so that you will have people paying different rents for the same units under a program known as the rent supplement program.

So in other words, to get this project approved by the federal government, we must prove to them that the buildings will be at the place that they can afford, the rental that they can afford. And if they cannot afford it, they will be given a rent supplement by the federal government to bring them up to that level that they can afford to live in the building. No one will be thrown out because they can't afford it.

This is being done all over the country, New York City, and so on.

THE SUPERVISOR: If I understand you correctly, this is an area of 30 some odd acres in which 60 to 80 percent of the present housing units are now in a serious state of deterioration.

As I understand your plan, you intend to clear the area, rehabilitate those housing units which can be re-

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habilitated, and develop a new housing complex unit listing town houses and girden type apartments; in no way a project such as we know it today, but to care for those people who now live in that particular area. In no way are you creating a ghetto by bringing new people in. Did I state correctly the figures as you gave them to me?

MR. GAYLE: I would like to clarify one thing. Since we used the word "ghetto", the people who are living there right now will be afforded a decent place in which to live right there if they desire to do so.

THE SUPERVISOR: Let's go further. If I understand you correctly, you're getting some eight to ten million dollars in funding for that area which was never there before.

MR. GAYLE: Yes

THE SUPERVISOR: Will there also be a creation of jobs and financing in money in that area that was not there before?

MR. GAYLE: We anticipate it.

THE SUPERVISOR: You should say so; do you or don't you?

MR. GAYLE: Yes. These answers will come with questions, but in the presentation, it's only a presentation of the Urban Renewal Plan. However, the construction that will be going up and the new bisinesses that we project, that anyone can come into it with a new business. We anticipate that there will be jobs for the construction of this whole project by people who are in the area.

THE SUPERVISOR: To relate to Mr. Livers' question which was one where there was total opposition with the plans, there was some indication on the community. I think he had acquainted himself with the town plan, there would be evidence there of an indication of some 2,000 units of housing in the Port Washington area with ultimately, some 200 units alone for low income; and some 70 percent would be more middle income housing. That, initself, puts the

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town beyond the first commitment.

Beyond that, I can say, at this time, that there is another side which is presently being negotiated subject to site development plane. This is approved by HUD, and is being studied by HUD. It is not to the extent that HUD does not know about it, HUD has appraised the sits. The properties are being appraised that is agreeable to HUD.

I think that here there is an opportunity to correct a blighted situation which is something that has been long overdue.

MR. SUROWIEC: The way I still feel about this setup, my place can be torn, and where do I get the money? I don't think the government will let me have the money.

COUNCILMAN MARTIN: Mr. Gayle, I have a question: In reference to Mrs. Jeffers, I believe, who requested some information about clinical facilities, could you, at this time, elaborate on that, and if so, the possible cooperation that you might have between North Shore Hospital, which is immediately adjacent to the area, and this plan?

MR. GAYLE: I spoke to a lady this morning prior to the meeting, and I pointed out all this, but I imagine, you would like some further clarification. As I stated to you this morning, North Shore Hospital is right across the street, and North Shore Hospital is now a teaching hospital in conjunction with Cornell University. North Shore Hospital runs the clinical facilities in the area. There is the North Shore Child Guidance who is set up to take care of emotional problems. There are a lot of other organizations that are set up in the area to take care of the clinical and emotional concerns.

As far as the project area is concerned, this is not a model city where you have money to set up clinics. We only have monies to develop an area and see that houses are built. The communities in other areas of the town must get together to work to get those clinical facilities. And the educational facilities that you spoke of,

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and I know that a lot of parents that are here are involved in just this type of an effort to see that the educational facilities, the clinical facilities, and the social facilities, are taken care of. We have no facilities to do that ourselves.

MRS. JEFFLES: May I clarify my question again, please? Again, my cuestion is in reference to future influx of families. I am fully aware of the location of the hospital and the facilities there. I have used them, even in Quiens, on rare occasions. But my question is whether, in the event of the influx of new families, will this hospital be so over-pressed, will facilities be so over-strained, that it will be inadequate? This is not within the domain of the builder. It is within our demain who live here.

When I spoke about jobs: I did not perhaps clarity it.

I have ask the building — and my husband is an engine r
he is a good one — he cannot get a jeb in the building
union. Bo I'm asking now, when you start building this preject, will you hire some of the black people who are trained,
not just shilled laborers?

At the risk of relevance, we are prosenting to you here a program for housing and redevelopment of the area. We are proposed to bring into the area is additional families over a five year period. It are not concerned -- we are concerned -- but we are not concerned here this morning with the development of clinical facili-

Hes. JEFFERS: You said you are not concern o?

AR, GARTHER: The need for clinical of other social facilities is not the function of this orban kenswal agency. I pointed out, and Hr. Gayle pointed outs, that the additional 35 families to this area in our view, over a five year period, would not necessarily inquider the need for additional clinical services, at 1 ast so far as our coincy is concerned. Our job here is to recovelep this area. Secondly, so far as the question of opportunity in the area for jobs and for construction —

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## (Interruption from the audience.)

MR. GARTNER: May I speak, Mrs. Jeffers? The project itself, which calls for construction and will require contractors and workers, as a matter of law requires that there be recruitment of minority contractors and minority workmen to build these projects. That is, a mandate of the Housing Act and the housing law and the housing regulations and in Roslyn, this is a requirement that we have imposed upon our executive director in terms of building that project.

I think what we really should address ourselves to is the need for housing in this area. I think that that's the consideration that this Board has to give, which is the redevelopment of an area where people live and live badly, and where there is a tremendous and overwhelming demand for new and better housing.

VOICE: I object to that. I would invite you personally to go to 95 percent of the houses ----

MR. GARTNER: Can I continue? I'd rather sit down --

VOICE: As a taxpayer --

THE SUPERVISOR: We are going to hear everyone. Please don't misunderstand. This gentleman, Mr. Gartner -- if I may explain, sir -- this gentleman, has served without compensation for many, many years as the chairman of our Urban Renewal --

VOICE: He doesn't live in our area.

THE SUPERVISOR: If I may finish, sir.

This gentleman has dedicated himself to this concept --

VOICE: We don't want that.

THE SUPERVISOR: What I'm trying to point out, he is here voluntarily. He is serving again without compensation. He is a dedicated individual and is entitled to be heard. I will hear everyone here. If you please let

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him continue without interruptions, we'll do the same for whomever else wishes to speak. I will call them in the order in which I have received them.

Please continue, Mr. Gartner.

MR. GARTNER: If you don't want to hear me, it's all right.

The Supervisor: I'd like to near you, and so do the membarsof the Town Board.

.th. GARTHER: I'm hart representing the Beard of the Orban Menawal AGency. It's up to the Town Beard to make the determination.

I feel strongly that it's a well thought out project. I just ask that you not be misdirected by other problems, which are problems, but which are problems that this agency cannot solve.

There may be problems that need to be solved in this area that must call for a solution, an there will be, I hope, solved, but they cannot be solved at once. These other problems will find their solution elsewhere. They don't fall within the province of our agency.

Thank you. Mr. Supervisor.

MR. RIVERS: I think it was a sarcastic remark "at the risk of relevance". They understand exactly what he says. That's what caused the problems. There is sarcasim here; I take objection to that.

I indicated that the Great Neck Manor Civic Association was for housing. We indicated that we are in accordance with regard to that. Sarcasim and that sort of attitude, has no place here. I resent it.

THE SUPERVISOR: I didn't datect that.

MR. RIVERS: At the risk of relevancy, doesn't go across here. These people are relevant; the issues are relevant. This kind of sarcasim is out of order.

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THE SUPERVISOR: You can rest assured that we will hear everyone here.

The next speaker I have it a Mr. Robert Mims, 80 Grandview Avenue, Great back.

MR. MIMS: Robert Mims, 80 Grandview Avenue, Great Neck.

We need houses, number one, but I'm primarily not speaking for housing. I'm speaking as a businessman of 14 years, and of having my business in the Bronx. And I heard Mr. Gayle say that buildings are put up, they will primarily be for the people are going to be displaced. I happen to have four locations in the Bronx. Swo locations that I have had to be funded by a white man in order for me to get a location. After some years of going through things like this, of making my own place, and having money to invest in other areas — this means, in Co-Op City I deposited \$10,000.00 to get a location there; turned down, black. Times Square Store in Oceanside, another \$10,000.00 turned down, black.

Now, East 118th Street where I had a store was taken by the City because they had Urban Renewal come in. I was promised first priority, that is, a small shopping center there. The store was even there and operated before I knew anything about it; white.

My question to you -- and this is 14 years of experience -- I tried to go to the bank to borrow money. I have to borrow money from loansharks and other sources when I want money. I just paid off, but not with the government, but a \$30,000.00 loan on \$24,000.00 within the last five years.

When the banks come -- I own \$3,000.00 in this area, three pieces of property which a bank lent me \$9,000.00. When I want to them for \$16,000.00 for my business, they said "You owe us too much". This money was not given to me directly, it was given to me by a builder.

What I'm saying to you people is this: Housing we reed; fine. There is nothing on the land there. If it

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will be built, fine. I have no objection to the housing. People need housing. But when you speak from a standpoint of a businessman, if you think you will be relocated and moved out of your business when these businesses come back, if I, myself, cannot put up the money — there are too many guys in municipal stocks and bonds that will buy these places.

Let me conclude: At one time, we had 18 employees: 18; all minority group people. I have got my first time yet anybody ever to come and say "Mr. Mims, I would like to join you; I would like to help you; I would like to do this." Everytime I ever saw a face, he has his hand out for more.

I'm saving this primarily because I want to come in the main stream of life, not on the side, not pushed back. I want to be in the main stream. There is going to be discrimination, pecause I discriminate myself; I was taught that way, and I had to be that way because I was taught, by you know who. Because what I'm going to say is, when people have a desire, need, for something like this, we are plotting two issues. Don't tell these poor people when they have a \$100.00 a month rent -- you see it all over the city everywhere -- who goes in? The people with the money. And if you think those places rent high, my last lease, I was paying \$200.00 a month for a store, the landlord gave me a lease with a five years. He says I give you five years providing you sign the lease that when this building is sold, you go into an apartment that you can -- either we avict you by 30 days notice, or your rent will be up \$600.00 a month.

THE SUPERVISOR: Next speaker is Mr. James Hand.

MR. HAND: James Hand, 25 Summer Avenue, Creat Neck.

Number one, I don't like the way the man was speaking, so I spoke out of turn because he had spoken out of turn. This lady, I don't remember. He gets up and started speaking while she was speaking, so I didn't think that was right. And then he referred to our houses, homes, as not fit to live in. Well, before I say anything more, I want to personally invite you and anyone you want to bring, to go all

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over -- I'm not talking about this area, but all over the rest of this community, and if you find one house -- you don't have to go to all of them -- one out of every ten, you will find they are brautiful homes; outside kept good, the inside kept good.

This is about ten years maybe of this area.

Number two, --

THE UPERVISOR: Mr. Hand, there is no misunderstanding. This town Board has visited the area. We are familiar with the homes, for instance, that are contained within the Great Neck Manor Civic Association. We know now well you do keep your homas, and we appreciate that, as all the other citizens in our town do.

However, the Urban Renewal Project, as such, is dedicated to the rehabilitation or complete removal of that 60 to 80 percent of the homes within that area that are in poor condition.

MR. HAND: I understand that. Number two, I don't think that the people that are living in this area that are supposed to get those homes are not residential people. They are transient people. They come and go. Sometimes they are here for a couple of months, and sometimes they are gone. Other people come, and you're looking at somebody that, actually, isn't rooted in the neighborhood. That's what I want you to understand. Thank you.

THE SUPERVISOR: Thank you very much.

Next person is Mr. Leon Burton.

MR. BURTON: My name is Leon Burton. I would first like to say that I was a resident of the Manhasset-Great Neck area for approximately 20 years, and only recently, we were forced to move out of the area due to lark of housing, and number two, the way the rent was going up. Secondly, I would like to say that those who are at this hearing this morning — and also, I would like to appeal to you to come out of your homes in the area and help us solve some of the problems which are now absolutely appalling,

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especially problems with drugs, as I am quite well aware that you all know about. And this problem alone is enough to force us to try to get some additional housing in that particular area.

As you know, along Northern Boulevard, that strip where there are bars, etc., this is the concentrated area where drugs are dispensed to the community, and many of your children are on drugs, and if they are not on drugs, they are experiencing with drugs. And if this situation is allowed to stay as it is now, I fear that you witness the destruction of your own children. And you must deal with this problem. You don't want them to get housing through this method and build some houses with our own resources in unity; maybe that is the sanction. Others just squabble over little irrelevant things using politics, or using philosophies; that's irrelevant to the lives of our children, to the lives of our brothers and sisters, and it is a sin.

As you know, we have churches in the area which usually open up on Sunday, and may be for choir rehearsals, but these facilities must also become more active, breause if they won't we experience destruction in our families.

On this basis, I wish you would reconsider our thinking and, Mr. Rivers from Westbury, they know the problems of housing in that area. News media used it to divide black communities throughout the country. As a matter of fact, that issue was in Reader's Didest, a national magazine, and it was in many, many periodicals. And what it did, it showed that while there are some blacks who are apposing housing for their own — while it's political housing for a particular blighted area, that is a mathod or tatic that is used.

I would like to close and thanking you for coming here. Come out to your community meeting, and we can work together, regardless of relief and other difficulties. Thank you.

THE SUPERVISOR: Mr. Paul Bather.

MR. BATHER: Paul Bather, executive director of the Hanhasset-Great Neck EOC, 313 Horthern Boulevarg,

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Manhasset.

Most of you know me; I'm the executive director of the Manhasset-Great Neck Ede.

The last time some of us saw each other was at the Planning board meeting.

Now, I think most of the pacple hare know what BOC wors. We are concerned with the pacple in the Manhagest-Great back Spinney Hill community. The problems of this Spinney Hill crosses our office everyday. We see, on Northern Boulevard, people paying \$200.00 a month rent for one room. I know or pacple living in the Manor, living in one room apartments, paying \$200.00, \$250.00 a month. I know of people living on Morthern Boulevard, where they don't have much to live for, because they're living in conditions that are so herrible.

Now, they are not transients. In fact, I haven't not too many transients in Great Nach. Nest of the people there are not transients. Now, I'd like to follow what Nr. Burton said. Again, I appeal for unity. This is no time to throw rocks, and do everything also. You have your concerns. In fact, four of the people who are officers of the Manor Civic Association are on the Board of the EOC. We've been talking about housing; we've been talking about economic development. We have designed a conomic development program for the commercial area that will do so much of those things that Mr. Mims was talking about. We are gathering the expertise to make sure that the Urban Renewal commercial site is owned by the community, is open to people in the community, and is going to be for the community.

The housing bit, we are not talking about concentrating people into an area. Our area is concentrated. You have families packed in upon families on Northern Boultvard at 832 straight on down. You go from Clark Drivestraight on down to Allen Drives, and you will sea what I see. I'm sure you've seen it. It's all crowded.

Now, we can take this program, this Urban Renewal Program, and make it work for us. Why? Number one, there

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is an executive director of the Urban Reneval Agency prisent who is present to see that this is not an Urban Renewal rip-off, but this is an Urban Renewal Program that will build a better community. To have a town government which, again, there are disagramments, but a town government that I have seen make a commitment to the BOC and to the community by working with us on a social front.

There are bankers, there are foundations in the fown of North Rempstead that we have approached for money, to do the necessary job that needs to be done in that area.

Now, what EOC does with the people, if BOC is the community, and the community wants the Board or EOC. We gether, with this Urban Ranewal Program, we can change Spinney Hill into a model community.

Ar. Carli (phonetic), do you remember, we've been talking to you for six months about the problems that thist as a person that's located on Northern Boulavard in Urban Renewal? We talked about getting together and planning for this, and making this thing work, so that everybody benefits. And that's what it's all about.

I could stand here for ten years and do a lot of screaming, talk about the problems, get a lot of things, and nothing will change on North rn Boulevard. I can scream, but if we work together, we can change because there is \$10,000,000.00 that will come into that community. I can't produce \$10,000,000.00, and no one of us can here. But if we work together, we can utilize \$10,000,000.00 for the benefit of that community beyond and above the monies that we can also bring in for the economic development.

So what I'm appealing to you, and I'm saying it again, either we work together and make this thing work, so we have a community that means something. I would not like to move out of the community. I don't want to live in Kings Point, I don't want to live in Kings Point, I don't want to live in Kingston, I don't want to live in God knows where. I'm not ready to buy a house, bacause, first of all, I can't get a down payment, second, I'm not interested in owing a house. But I would like to live in the community. But where? I'm not going to move my wife to Northern Boulevard. I'm not going to live in a rooming house. You talk about our younger

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generation. Where are your children going to move? Are they going to move to Westbury or to Amityville? Why can't your children stay, but not have to live in your house? Because they don't want to live in your house. Why can't your children stay in the community? We're going about thebusiness of creating jobs in the community as well as outside of the community for your children.

You know, this is what community togetherness can do for us. Not me, I said this at the Urban Renewal hearing before. It's not you, it's not me, it's not even we; it's us. And us working together, talking about the facts, and making these good decisions, we can change the face of that community. Town Hall isn't going to do it for us; we can do it with Town Hall, and we can make this program work for us.

I trust the integrity of Mr. Gayle. I also talked to Mr. Jones on numerous occasions about this particular devalopment program, and he's on our economic development committee -- and I invited him on that committee for that sole purpose. Mrs. Brown went to California to learn about economic development.

I'm not trying to pull wool over anybody's eyes. We are talking about community involvement in working for a better community. The Manor Civic Association is a good group. I remember going to the Methodist Church the first time I became director of the EOC, and we talked about a lot of things, and a lot of programs that existed within the Manor.

Now, I don't see the Manor, I don't see the project, I don't see the Boulevard as separate communities. I see it as having them work together. I see there are a lot of good people in each of those communities. That can really bring about change.

So let's think positively; let's get away from my particular interest, and try to work for our interest. It's the only way that we are going to survive. And I would rather see us live well then just have to survive. So somebody might feel he's trying to say something and get something across because he's the executive director

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of the EOC and trying to look good. That's not what it's all about.

We've been talking with North Shore Hospital for improvement in the health delivery system. We've been talking to Manhasect Schools for different changes in curriculum. These are all things that have been happening similtaneously. They can be implimented together. We're talking about North Shore Hospital setting up clinics within the community. We talked about expanded day care services within the community for our Head Start Program. Again, we have no place to expand. With Urban Renewal in utilization, we can do that. We shall have a fine community that we all can be proud of and we can all live together and we all can enjoy.

So please, again, please, work; let's be positive. There are things that we all probably cannot agree upon at any one time. We have to give and take; that's what life is all about. But believe me, we can utilize this thing, because we are not going to be hurt by the Urban Renewal. We can utilize this \$10,000.00. Thank you.

THE SUPERVISOR: Mrs. James Brown.

MRS. BROWN: Mr. Chairman, I'm Mrs. James Brown. I would like to know more about this alternate site. I heard quite a bit of the site as proposed from Manhasget-Great Neck. I heard quite a bit about that. I'd like to know a bit more about the alternate site that I heard.

THE SUPERVISOR: You're talking about the proposed site that's now under negotiation?

MRS. BROWN: Yes.

THE SUPERVISOR: If I was free to do so, I would be delighted to reveal that at this time. However, it's a subject of negotiation, and because of the many problems that arise once these sites are made public, the price of negotiation would vary. Right now, that site is known to the HUD officials and to the Town officials working in that regard. My point is that progress is being made.

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Did you wish to speak in addition to that?

MRS. BROWN: I thought HoD had bought some land to that effect, approved or something, no?

THE SUPERVISOR: HUD has approved the site.

MRS. BROWN: But it's confidential?

THE SUPERVISOR: It's confidential.

MRS. BROWN: I ask that there is a guarantee that there will be 117 buildings there.

THE SUPERVISOR: NO Way.

MRS. BROWN: Probably nothing?

THE SUPERVISOR: You can rest assured, that the concept of the Town with regard to housing outside of the area containments will not be a concept of large concentration in one area.

MRS. BROWN: Very good, Mr. Town Attorney.

THE SUPERVISOR: Mr. Richard Dundore.

MR. DUNDORE: My name is Richard F. Dundore. I'm a resident of Manhasset, and I am chairman of the Intermith Council of Manhasset. I am representing the Interfaith Council of Manhasset today.

I think, in light of some of the conversations going on here, or some of the representations that have been made, it's excellent to have all of the counter-representations here and out in the open, we have the Interfaith Council representing all of the churches of Manhasset, including our sister church, Olive Esptist Church. We have been listening to and observing for a number of years the problems and the requests for improved housing, particularly in the Spinney Hill area. We have, I believe, a record of having supported housing under the Housing Authority when most towns on Long Island were judicially avoiding the housing, and, I think, that this town, North Hempstead, has an enviable record and one we should recognize as

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having built and provided low income housing in more generous forms and numbers than in many of the other towns on Long Island.

We can only live in our own backyards. The Interfaith Council therefore, speaks from listening to and trying to be aware of the concerns in our own backyards. We have representatives from many civic associations in our churches, and these representatives have voiced very great concern about increased taxes, about increased schools, and have looked for all types of reasons.

We believe, to oppose Urban Renewal and to oppose any multi-family housing in our backyard, and to oppose additional housing in this area --

Through our Interfaith Council, may I say, we hope that we have carried enough discussion about the needs, back to our churches, and through our constituents in our churches, so that we believe that we can andorse the brban Renewal Project at this time, and we are hoping that there will be none of our civic associations here in opposition to it for those reasons that I just stated, of increased taxes or increased schools. We believe that we have developed an ability to deal with more people in our schools; we have essentially two school systems going on here, both the public school system and the St. Mary school system, and we don't believe that we have an oversaturation or an overly high proportion of new bers from any ethnic group. Certainly, we are not concerned with the number of blacks we have in the area, nor do we believe that the concentration is so great that it recommends a highly saturated othnic area, because we know that there are great moves being made.

One of our concerns, primary concerns, of dealing with the question of supporting the Urban Reneval area and support of the housing in the area, was particularly that question. We were concerned with two matters: One, the number of years that we can all spend in Court arguing legal battles of exclusion, or, the alternative of getting on with building housing as we can, and where we can, recognizing that there will be need for additional housing in the future as well.

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We do need, and we have unconsteed, and we have been secretized, with the assurances of the four spard that they have addressed themselves natisfactorily to HUD's requirement for scattered to these are busy accomplishing this. We will also continuously in support of those endeavers, and we will then help to enlist the support of all of our church members to gain that result.

Now, we have two other concerns; one, increased, that is, better housing to overcome the conditions that are unsatisfactory, to bring it up to the level that we all have good housing for everyone that's our neighbor. We are looking out for our neighbor. And two, that in that process we are able to provide for more income levels, that we do not have to see our friends on school poeres and other civic groups leave just about the time when we need them the most only because they reach a level where they have to get out and take their families samplace for actter housing. We are trying to develop a continuously growing, stable community.

One other matter is a matter of concern. As we heard the initial presentation of the plan and the support of the planning board, we have, from the beginning, been cognizant of our sister churches needs, the Mt. Olive Baptist Church, in developing a new approach to their own building program, and the fact that they were and have owned and saved up for many years for one of the patches of land there, areas of land, that they do intend to do some work on and do some more building. The importance of that church in that community, I think, goes without saying. The importance of our support of that church must be paramount in the whole effort. Therefore, we are delighted to see the modification of the acquisition plan as presented today to show that that land will not be acquired, and we're noping that until such time as Mt. Oliva decides how it wants to proceed, that no action be taken with regard to their land.

I think with these matters in mind, we find the Urban Renewal Agency very responsive to dealing with the many problems that have gone on here. We are going to be around for a few more years; our churches will be around for the whole life of the project. There is no end of new problems that will arise, and I would hate to tack heavy'

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legal opposition on the front and of this and dissipate several years of effort.

I happen to belong to bot sured that has just spent three years in Court trying to sfend the site for multi-family housing in this area. We fortunately have become successful, but we have been decayed with multi-family housing mended for teachers, young families, young professional groups, young engineers, the kind of people we are trying to encourage to move into this area. I would hope not to repeat that experience.

We would, with those comments, wish to endorse the Urban Renewal Project and to endorse the plans that they have for the neighborhood development program.

The SUPERVISOR: Thank you, ir. bunders.

Mr. James Parker.

MR. PARKER: James Parker, Chairman of the board, Community Coalition.

I'm not going to say very much because, I think, every thing has been said, but I would like for the Town Board to take into consideration the needs of the people and pass the Urban Renewal Project for Spinney Hill with all speed. Thank you.

(Applause.)

THE SUPERVISOR: Thank you, Mr. Parker.

Mr. Samuel Oakley.

MR. OAKLEY: Samuel Gaxley, Jr. Mr. Supervisor, members of the Board: I don't want to say too much myself. I think that anyone who has ever passed through the Spinney Hill area, or have any knowledge of the series of meetings with the Supervisor, Mr. Gayle and other members of HUD, etc., on housing, I think, that if they were aware of all the years of trials and tribulations to get to this point, I don't think that anyone could be in the negative as far as what Spinney Hill needs.

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I just like to also say that a lot of people that would have liked to be here to be couldn't be here because they happen to be hard working individuals, they can't afford to lose the time, because they must make this money to pay some of those exorbifiant rents that are being charged. I won't name any place, because I don't want any rocks thrown at this time. Some of the people that are not here have children that they must maintain a living to have someone watch the child while they are away at work, and to carry it on with the business at hand of raising that child and supporting themselves.

So what I'm saying in conclusion, is that there are many people that are not here this morning, not because they weren't interested, not because they're not aware of what's going on, but because they couldn't afford to be here this morning. And I would like to say to the people that are here now that the one thing to keep in mind is unity. We can't play in the hands of the press whomsometimes makes things appear to be a little more than they really are. Sometimes they sort of distort the truth, sometimes. But that, I mean, maybe a little petty disagreement among groups or persons in the area is presented in the press to be a division of the people in the area. And I know that as a fact that we won't have that, and I think its been proven here this morning. Thank you.

THE SUPERVISOR: Mrs. Barbara Fried, for the League of Women Voters.

MRS. FRIED: 49 Campbell Street, New Hyde Park. I'm Barbara Fried, and I speak for over 500 members of the League of Women Voters in Great Neck and Manhasset.

The League has been studying housing nationally. Our local study has substantiated the fact that housing for middle and low income families is in critically short supply, and housing must be built to meet this need. The program that is being considered today will provide shelter for many families in this community who are presently forced to live in housing which is substandard, overcrowded, and of the sort which may contribute to serious social problems.

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This program will benefit the community in the following ways: The appearance of the community will be greatly improved with the replacement of unsightly and substandard buildings with a planned community of well designed buildings, with open spaces, parks and recreation areas, and provision of services forthe community. The community will benefit from the convenience of having attractive modern shopping facilities nearby, and will benefit economically as these businesses prosper as a result of being in an improved and stable neighborhood. The community will benefit because the tax base will be broadened. Property values will remain high because this problem will stop deterioration of this area. The community will benefit because its one family character will be strenghtened as families who are presently sharing overcrowded quarters in single houses with other families will have the opportunity to live in individual family units.

We urge the adoption of this program because we feel that decent housing for every family in a well planned community with needed community services will stop the spread of slums, and will improve the quality of life for all our citizens. I'd like to add that the League of Women Voters also supports scatter-site housing in addition to the Urban Renewal housing, and have been working and continue to do so.

VOICE: She referred to low income, and I don't remember Mr. Gayle saying low income.

THE SUPERVISOR: Mr. Gayle, would you like to reply to that?

MR. GAYLE: The plan does not call for low income housing. You talk about low income projects. The plan calls for moderate income housing, and in that housing, there will be rent supplements so that people with low income can also fit in there.

MRS. BROWN: I'd like to ask the League of Momen Voters a question. Mrs. Fried is now representing a person who is a part of a corporation. And also I would like to ask her if she truly represents the 500 members of the League.

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THE SUPERVISOR: If you wish to reply, you may, Mrs. Fried.

MRS. PRIDD: As I stated, I'm speaking for the nor bers of the League of Momen Voters of Menhasset and Great Mode. I am not speaking for Frs. Clayman (honotic) modes a the Tri Board Plan. I am speaking for the League. When the E agus less a study, we present it to our combination, and I speak for the members. We would be delighted to have you join the League of Momen Voters.

This SUPERVISOR: Mrs. Dorothy Paters.

have been aresident in the Great Neck-Canhasset area for my lifetime. I won't mention my age. I have worked on not only housing programs in this dommunity, I've worked on my ployment problems, I've worked on education problems, on drug problems, on recreation problems, and any others that you should like to mention. I am knowledgable about this community, as knowledgable as anyone in here, and maybe more so than a lot, because I don't just go through Spinney Hill, I go into the homes. I talk to the people, I know their problems, I go into the rooming houses where people are living, pay exorbitant rents, and have been for years, not because they want to be there but because they're forced to live in these kind of conditions.

I am here today. At first, I was not going to speak. I felt that Mr. Bather had spoken representing our agency, but as an individual, I have a responsibility to the people that I'm trying to help. I'm asking each one of you here to consider the ghetto that you're referring to. It represents our people, black people, and many of us have come from there. I lived in the ghetto, and I'm still a part of the ghetto because I'm black. I care about the people that are less fortunate than I am. I don't own a home. All I care about, at this point, is that we stop discussing those kinds of things that are relevant in the long run. We have got to join together in this community to help our people.

I was the first one when they started to talk about

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building another housing development in the Spinney Hill area some years ago to oppose it. I wanted to desegregate. I wanted scatter-site housing, and I still want it. But, you know, what you're doing to have to go through to get it. Do you been to tell no that we're going to turn down something that we can improve our community right now in hopes of something that you will scuffle for for years perhaps?

This is my recommendation to the people, if you really care, that you encorse this Urban Ranawal Program. Those things that you're talking about, the black businessman, you got 50 or 60 black businessmen in the community that can get together to see that black susiness benefits the community. You can see that the health facilities are adequate, you can see that the education system in this community is what we want and need for our children.

But it's not this way; we've got to pull together. Businessmen can get in touch together as a group and stop thinking on an individual basis. We have a responsibility to our daughters and sons, our granddaughters and our grandsons. I ask you today to think very seriously about the action that you're taking. Thank you.

(Applause.)

THE SUPERVISOR: Thank you is. Peters.

Anyone else who wishes to : in this particular matter?

If not, we have the pleasure of the Board at this point.

COUNCILMAN MARTIN: Before making a motion on this particular subject that we have been hearing this morning. I think, that when we think of people we think of the community in which they live. You think of the churches, you think of the schools, you think of the hospitals, and you think of the homes in which those people reside.

I am firmly convinced, from the presentation made by the Urban Renewal Agency this morning and this afternoon,

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that that what they have presented to us as the Town Board will help and enable a good community to become a better one. Therfore, I move for the adoption and approval of this plan by the Town Board.

THE TOWN CLERK: Councilma

Councilman Davanzo?

COUNCILMAN DAVANZO:

Aye.

THE TOWN CLERK:

Councilman Martin?

COUNCILMAN MARTIN:

Aye.

THE TOWN CLERK:

Councilman Cunningham?

COUNCILMAN CUNNINGHAM:

Aye.

THE TOWN CLERK:

Councilman Weinstein?

COUNCILMAN WEINSTEIN:

Aye.

THE TOWN CLERK:

Supervisor Tully?

THE SUPERVISOR:

Aye.

(Applause.)

THE SUPERVISOR: At this point, I would like personally to compliment Mr. Bernard Gartner, the Chairman of the Urban Renewal Agency and the members, Mr. Joseph Mrs. Edith Lane, and Mrs. Naomi Cheasla, who appeared today, for the fine work they did in preparing this program, and certainly the director, Mr. Hector Gayle, whom you all have heard; Mr. Sol Jack, and the other members of their staff, for the excellent presentation, and everything they did to make this program worthy.

We know a great many things remain to be done; we know there is still a certain amount fo concern on the part of certain residents. You can rest assured that myself, and the other members of the Town Boald, stand ready to support the community in every way, to see that this program is properly executed. We thank you all for coming.

STATE OF NEW YORK )

COUNTY OF NASSAU )

EDWARD PICTROWSKI being duly sworn, deposes and says, that on the 31st day of May, 1972, he posted copies of the annexed notice of hearing to be held on the 13th day of June, 1972, to consider the Neighborhood Development Program - Spinney Hill Project, in the following conspicuous places in the Town:

Pole - s/w corner Clark Drive and Northern Boulevard, Great Neck, N. Y. Sign Pole - s/w corner Udall Drive and Northern Boulevard, Great Neck, N. Y. Pole - s/w corner Allen Drive and Northern Boulevard, Great Neck, N. Y. Pole - s/w corner Northern Boulevard and Community Drive, Manhasset, N. Y. Pole - s/w corner Community Drive and High Street, Manhasset, N. Y. Town Clerk's Bulletin Board, Town Hall, Manhasset, N. Y.

Sworn to before me this day of June, 1972.

Mailes

Edward Teotrowske

CHARLES L. McKEE JR.
NOTARY PUBLIC, State of New York
No. 30-26/6375
Qualified in Nassau County
Commission Expires March 30, 19

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State of New York County of Nassau

#### Lucille Seymour

being duly sworn, doth depose and say that she is the principal clerk of the publisher of a newspaper known and designated as THE GREAT NECK RECORD, published weekly at Great Neck, in the County of Nassau, N. Y., that a Notice of

Spinney Hill Hearing of which the annexed is a true copy, has been regularly published in the said newspaper once each week for weeks, on the following dates

6/1,8/72 Healle Liga

Sworn to before me this 9 day of June 19 72

The Great Neck Record

123 MIDDLE NECK RC.O GREAT NECK, NEW YORK

TELEPHONE 482-4490

# Spinney I'll Hearing

NOTICE OF PUBLIC HEARING OF THE TOWN OF NORTH HEMPSTEAD, MANHASSET, NEW YORK

PLEASE TAKE NOTICE that the Town Board of the Town of North Hempstead will hold a public hearing on the 13th day of June, 1972, at 10:30 o'clock in the forenoon of that day at Town Hall, 107enoon of that day at 10 wh Hall, 220 Plandome Road, Manhasset, New York, with respect to the Neighborhood Development Pro-gram - Spinney Hill Project and the Action Year Activities there-for hereinafter called the Profor, hereinafter called the "Project". The boundaries of the area hereinafter called "the Neigh-borhood Development Program Area", are generally bounded and described in Exhibit A and the Spinney Hill First Year Action Area boundaries are generally bounded and described in Exhibit B, both as hereinafter set forth.

The purposes of the public

The purposes of the public hearing are as follows:
To consider a proposal of the Town of North Hempstead Urban Renewal Agency for the undertaking of the Project under Local Law and the Laws of the State of New York (including Article 15 and 15-A of the General Municipal Law) with the Federal financial pal Law) with the Federal financial assistance under Title 1 of the Housing Act of 1949, as amended, involving slum clearance, development and redevel-

onment of the Neighborhood De-velopment Program Literal and in so coing to achies land in the halpsborhood Davelopment Progrem Area, to comolish or re-move buildings and improve-ments, to install, construct, or reconstruct streets, utilities and other improvements, including parks and playgrounds; to make land available for development and redevelopment by private en-terprise, quasi-public or public agencies and to prescribe regula-tions and controls for same; to formulate regulations and controls for certain land uses in the Neighborhood Development Program Area not presently designated for acquisition, but which nated for acquisition, but which may, under certain circumstances, be subsequently acquired, as authorized by law; to consider plans for a program of repair and reliabilitation of building or other improvements in or other improvements in and as designated for conservation in the Neighborhood Development Program Area; and to do any and all other things in accordance with law as may be necessary for the undertaking and completion of the Project

To consider the approval of the Urban Renewal Plan for the Project and the Neighborhood De-velopment Program Area, subweighted to the Town Board of the Town of North Hempstead by the Town of North Hempstead Urban

Renewal Agency.

To make a finding as to whether or not the Neighborhood Development Program Area is a substandard or insanitary area, or is in danger of becoming a substandard or insanitary area and tends to impair or arrest the sound growth and development of the Town of North Lempstead and is appropriate for Urban Re-

To make a finding that the financial aid to be provided to the Town of North Hempstead is necessary to enable the Project to be undertaken in accordance with the Urban Renewal Plan for the Project and the Neighborhood Development Program Area.

To consider making a finding that the aforesaid Urban Renewal Plan affords maximum opportunity to private enterprise, consistent with the sound needs of the Town of North Hempstead as whole, for the undertaking of an Urban Renewal-Neighborhood Development Program.

To consider making a finding that the aforesaid Urban Renewal Plan conforms to the Master Plan for the development of the Town North Hempstead as a whole

To consider making a finding that there is a feasible method for the relocation of families and individuals displaced from the Neighborhood Development Pr gram Area into decent, safe, and sanitary dwellings, which are or will be provided in the Neighborhood Development Program Area or in other areas not generally less desirable in regard to public utilities, public and commercial facilities, at rents or prices within the financial means of such families or individuals, and reasonably accessible to their places of employment.

To consider making a finding that the undertaking and carrying out of the Urban Renewal-Neigh borhood Development Program Activities in stages is in the best public interest and will not cause any additional or increased hardship to the residents of the Neighborhood Development Program

PLEASE TAKE FURTHER NOTICE that the Relocation Program for the Project for the relocation of persons and/or families and assistance to business concerns located in the Neighbor hood Development Program Area :OAD affected by the Action Year Ac-Plan for the Project will be available for examination prior to the public hearing at the office of the Town Clerk of the Town of North Hempstead, at Town Hall, 220 Plandome Road, Manhasset, New York, between the hours of 9 A.M. and 4:45 P.M. Monday through riday, and will be open for discussion at the public hearing.

All persons or organizations desiring to be heard at the public hearing will be afforded an opportunity to be heard.

Dated: Manhasset, New York May 23, 1972 BY ORDER OF THE TOWN BOARD OF THE TOWN OF NORTH HEMPSTEAD MICHAEL J. TULLY, JR. Supervisor WILLIAM H. RYAN. JR. Town Clerk EXHIBIT A

BOUNDARY OF SPINNEY HILL NEIGHBORHOOD DEVELOPMENT PROGRAM

Beginning at a point where the forthern line of Lot 14 in Block 116, Section 2 as shown on the Tax Maps of the Town of North Hempstead. as extended in a westerly

direction across Clark Drive I-way, intersects with the wes...rly side of Clark Drive. thence, proceeding in a northerly direction along said westerly side of Clark Drive to a point where it intersects with the northerly side of North Hempstead Turnpike, known also as Northern Boule vard, or the Incorporated Village of Thomaston's boundary line; thence proceeding in an easterly and a northerly direction along the Incorporated Village Thomaston's boundary line to a point where it intersects with the southern boundary line of Lot 44B in Block 210, Section 2 as shown on the Tax Maps of the Town of North Hempstead; thence, proceeding in an easterly direction to a point where it intersects with the western side of East Road, and continuing Shore across the East Shore Road right of-way, to a point where it intersects with the eastern side of East Shore Road; thence, proceeding in a southerly direction along the said eastern side of East Shore Road to a point where it intersects with the western line of Lot 6 in Block C, Section 2 as shown on the Tax Maps of the Town of North Hempstead; thence, proceeding in a southerly direction along said lot line to a point where it intersects the northern line of Lots 174, 56, 54, 52, 50, 48, 46, 44, 42, 40, and 38 in Block 232, 2 as shown on the Tax Maps of the Town of North Hempstead; thence, proceeding in an easterly direction along said lot line to a point where it intersects with the eastern line of said Lot 38 in Block 232; thence, proceeding in a southerly direction along said lot line to a point where it intersects with the northern side of High Street; thence, proceeding easterly and northerly along said side of High Street to a point where it intersects with the western side of Community Drive: thence, proceeding in an easterly direction across Community Drive right-of-way to a point where it intersects with the eastern side of said Community Drive; thence, proceeding in a

mmunity Drive to a point where it intersects with the southern line of Lot 56 in Block D, Section 2 as shown on the Tax Maps of the Town of North Hempstead, as extended in . If beginning. an easterly direction across Community Drive right-of-way; thence, proceeding in a westerly direction across said right-ofway and continuing along the southern line of Lots 56, 57, 33, through 42 inclusive, and 6 in Block D, Section 2 as shown on the Tax Maps of the Town of North Hempstead to a point where it intersects with the eastern side of Allen Drive; thence, proceeding in a westerly direction across Allen Drive to a point where the western side of Allen Drive intersects with the southern lot line of Number 65 Allen Drive; thence proceeding in a westerly direction along the said southern lot line of Number 65 Allen Drive to a point where it intersects with the western lot line of Number 65 Allen Drive; thence, proceeding in a northerly direction along the western lot line of Numbers 31, 37, 43, 51, 63, and 65 Allen Drive to a point where it intersects with the northern line of Lots 3 and 49 in Block 117, Section 2 as shown on the Tax Maps of the of North Hempstead; thence, proceeding in a westerly direction along said northern boundary to a point where it intersects with the eastern side of Udall Drive; thence, proceeding in a northerly direction along the eastern side of Udall Drive for a distance of approximately 20 feet; thence, proceeding in a westerly direction across Udall Drive right-of-way, and continuing along the northern line of Lot 56 in Block 116, Section 2 as shown on the Tax Maps of the Town of North Hempstead, to a point where it intersects with the western boundary line of said Lot; thence, proceeding in a southerly direction along said boundary line to a point where it intersects the northern boundary line of Lot 14 in Block 116, Section 2 as

eastern side c

The Great Neck Rection along the said eastern to the Great with the northern lot line of

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shown on the Tax Maps of the southerly direction along said of North Hempstead thence, proceeding in a westerly direction to a point where it in tersects with the western side of Clark Drive or the point and place

> FYHIRIT B SPINNEY HILL

FIRST YEAR ACTION AREA Beginning at a point formed by the intersection of the eastern right-of-way line of Allen Drive with the northern lot line of lot 13 in Block 120 of the Nassau County Land and Tax Map; thence. proceeding in an easterly direc tion along the northern lot line of lots 13, 18, 19, 20, and 21 in Block 120 to a point where it intersects with the western lot line of lot 17 in Block C; thence, proceeding in an easterly direction across lot 17 to a point where the eastern lot line of lot 17 intersects with the northern lot line of lot 9; thence, proceeding in an easterly direction along the said northern lot line of lot 9 to a point where it intersects with the eastern lot line of lot 9; thence, proceeding in a southerly direction along the said eastern lot line of lot 9 to a point where it intersects with northern lot line of lot 174 in Block 232; thence proceeding in a southerly direction along a line parallel to and roughly 360 feet from the eastern right-of-way line of Allen Drive across lot 174 in Block 232, lot 277 in Block D. and lot 57 in Block D to a point where it intersects with the northern right-of-way line of Brook Place if extended; thence, proceeding in an easterly direction along the said right-of-way line if extended to a point where it intersects with the eastern lot line of lot 57 in Block D; thence, proceeding in a northerly direction along the eastern lot line of lots 57 and 277 in Block D to a. point where it intersects with the southern right-of-way line of High Street; thence, proceeding in an easterly direction along the said right-of-way line to a point where it intersects with the eastern lot line of lot 149 in Block D; thence, proceeding in a southerly direction along the said eastern lot 56 in Block D; thence, proceeding in an easterly direction along the said northern lot line point where it intersects to a with the eastern lot line of lot 133 in Block D; thence, proceeding in a northerly direction along the said eastern lot line to a point where it intersects with the southern right-of-way line of High Street; thence, proceeding in an easterly direction along the said right-of-way line to a point where it intersects with the east ern lot line of lot 113 in Block D; thence, proceeding in a southerly direction along the said eastern lot line to a point where it intersects with the northern lot line of lot 56 in Block D; thence, proceeding in an easterly direction along the said northern lot line to a point where it intersects with the western right-of-way line of Community Drive; thence, proceeding in a southerly direction along the said right-of-way line to a point where it intersects with the southern lot line of lot 56 in Block D; thence, proceeding in a westerly direction along the said southern lot line and the southern lot lines of lots 57, 6, and 33-42 in Block D to a point where they intersect with the eastern rightof-way line of Allen Drive: thence, proceeding in a norther ly direction along the said rightof-way line to a point where it intersects with the northern lot line of lot 13 in Block 120, which is the point or place of beginning.

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Councilman Martin offered the following resolution and moved its adoption, which resolution was declared adopted after a poll of the members of this Board:

#### RESOLUTION NO. 282 - 1972

A RESOLUTION OF THE TOWN BOARD OF THE TOWN OF NORTH HEMPSTEAD DETERMINING, AMONG OTHER THINGS, THAT THE SPINNEY HILL PROJECT AREA IS A SUBSTANDARD OR INSANITARY AREA.

WHEREAS, the Town of North Hempstead Urban Renewal Agency has submitted to the Town of North Hempstead and the Town Board thereof the Neighborhood Development Program-Spinney Hill Project for the area described in Exhibit A, attached hereto, hereinafter called the "Project" and the "Project Area" respectively; and

WHEREAS, the Town of North Hempstead Urban Renewal Agency has also submitted to the Town of North Hempstead and the Town Board thereof the Urban Renewal Plan dated March 15, 1972, for the Project and the Project Area consisting of eighteen pages, Table of Contents, two maps and two exhibits (hereinafter called the "Urban Renewal Plan"); and

WHEREAS, the Town Board of the Town of North Hempstead did on June 13, 1972, hold a public hearing on the Project and the Project Area as required by Article 15 and Article XV-A of the General Municipal Law of the State of New York,

NOW, THEREFORE, BE IT

RESOLVED by the Town Board of the Town of North Hempstead:

- 1. That the Urban Renewal Plan, a copy of which is on file with the Town Clerk, is hereby approved and meets with the unqualified approval of the Town Board of the Town of North Hempstead.
- 2. That the Project Area is a substandard or insanitary area, or is in danger of becoming a substandard or insanitary area and tends to impar or arrest the sound growth and development of the Town of North Hempstead.
- 3. The financial aid to be provided to the Town of North Hempstead is necessary to enable th Project to be undertaken in accordance with the Urban Renewal Plan.
- 4. The Urban Renewal Plan affords maximum opportunity to private enterprise, consistent with the sound needs of the Town of North Hempstead as a whole, for the undertaking of the neighborhood and/or urban renewal program, for the Project.
- 5. The Urban Renewal Plan conforms to a comprehensive community plan for the development of the Town of North Hempstead as a whole.
- 6. There is a feasible method for the relocation of families and individuals displaced from the Project Area into decent, safe, and sanitary dwellings, which are or will be provided in the Project Area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities, at rents or prices within the financial means of such families or individuals, and reasonably accessible to their places of employment.

7. That the undertaking and carrying out of the neighbrohood development program and/or urban renewal activities in stages in the Project Area is in the best public interest and will not cause any additional or increased hardship to the residents of the Project Area.

The vote on the foregoing resolution was recorded as follows:

AYES: Councilmen DaVanzo, Martin, Weinstein and Cunningham and Supervisor Tully

NAYS: None.

Councilman Martin offered the following resolution and moved its adoption, which resolution was declared adopted after a poll of the members of this Board:

#### RESOLUTION NO. 283 - 1972

A RESOLUTION OF THE TOWN BOARD OF THE TOWN OF NORTH HEMPSTEAD APPROVING THE URBAN RENEWAL PLAN AND THE FEASIBILITY OF RELOCATION FOR NEIGHBORHOOD DEVELOPMENT PROGRAM-SPINNEY HILL PROJECT.

WHEREAS, under the provisions of Title 1 of the Housing Act of 1949, as amended, the Secretary of Housing and Urban Development is authorized to provide financial assistance to Local Public Agencies for undertaking and carrying out Neighborhood Development Programs; and

WHEREAS, it is provided in such Act that contracts for financial aid thereunder shall require that the Urban Renewal Plan for the respective urban renewal areas comprising the Neighborhood Development Program be approved by the governing body of the locality in which areas are situated and that such approval include findings by the governing body that: (1) the financial aid to be provided in the contract is necessary to enable the Program to be undertaken in accordance with the Urban Renewal Plan; (2) the Urban Renewal Plan will afford maximum opportunity consistent with the sound needs of the locality as a whole, for the rehabilitation or redevelopment of the urban renewal areas by private enterprise; (3) the Urban Renewal Plan conforms to a general plan for the development of the locality as a whole; and (4) the Urban Renewal Plan gives due consideration to the provision of adequate park and recreational areas and facilities as may be desirable for neighborhood improvement, with special consideration for the health, safety, and welfare of children residing in the general vicinity of the site covered by the Plan; and

WHEREAS, it is desirable and in the public interest that the Town of North Hempstead Urban Renewal Agency (herein called the "Local Public Agency") undertake and carry out the Spinney Hill Neighborhood Development Program (herein called the "Program"), identified as Spinney Hill Project and encompassing the area bounded as described in Exhibit A attached hereto, in the Town of North Hempstead, State of New York, (herein called the "Locality"); and

WHEREAS, the Local Public Agency has applied for financial assistance under such Act and proposes to enter into a contract or contracts with the Department of Housing and Urban Development for the undertaking of, and for making available financial assistance for the Program; and

WHEREAS, the Local Public Agency has made studies of the location, physical condition of structures, land use, environmental influences, and social, cultural, and economic conditions of the urban renewal area or areas comprising the Program and has determined that the areas are substandard or insanitary areas and tend to impair or arrest the sound growth and development of the Locality and qualify as an eligible Project under Article 15 and Article XV-A of the General Municipal Law of the State of New York and the members of this Governing Body have been fully apprised by the Local Public Agency and are aware of these facts and conditions; and

WHEREAS, there has been prepared and referred to the Town Board of the locality (herein called the "Governing Body") for review and approval an Urban Plan for the Urban Renewal areas, dated March 15, 1972, and consisting of eighteen pages, Table of Contents, two maps and two exhibits supported by the following supplementary material, data, and recommendations not part of the Urban Renewal Plan, Neighborhood Development Program - Spinney Hill Neighborhood Development Program application; and

WHEREAS, the Urban Renewal Plan has been approved by the Governing Body of the Local Public Agency, as evidenced by the copy of said Body's duly certified resolution approving the Urban Renewal Plan, which is adtached thereto; and

WHEREAS, a general plan has been prepared and is recognized and used as a guide for the general development of the Locality as a whole; and

WHEREAS, the Planning Board of the Town of North Hempstead, which is the duly designated and acting official planning body for the Locality, has submitted to the Governing Body its report and recommendations respecting the Urban Renewai Plan for the urban renewal areas comprising the Program and has certified that the Urban Renewal Plan conforms to the general plan for the Locality as a whole, and the Governing Body has duly considered the report, recommendations and certification of the planning body; and

WHEREAS, the Local Public Agency has prepared and submitted a program for the relocation of individuals and families that may be displaced as a result of carrying out the Program in accordance with the Urban Renewal Plan; and

WHEREAS, there have also been presented to the Governing Body information and data respecting the relocation program which has been prepared by the Local Public Agency as a result of studies, surveys and inspections in the areas comprising the program and the assembling and analysis of the data and information obtained from such studies, surveys, and inspections; and

WHEREAS, the members of the Governing Body have general knowledge of the conditions prevailing in the urban renewal areas and of the availability of proper housing in the Locality for the relocation of individuals and families that may be displaced by the Program, and, in the light of such knowledge of local housing conditions, have carefully considered and reviewed such proposals for relocation; and

WHEREAS, it is necessary that the Governing Body take appropriate official action respecting the relocation program and the Urban Renewal Plan for the Program in conformity with the contracts for financial assistance between the Local Public Agency and the United States of America, acting by and through the Secretary of Housing and Urban Development; and

WHEREAS, the Governing Body is cognizant of the conditions that are imposed in the undertaking and carrying out of urban renewal activities and undertakings, with Federal financial assistance, under Title I, including those prohibiting discrimination because of race, color, creed, or national origin,

#### NOW, THEREFORE, BE IT

RESOLVED by the Town Board of the Town of North Hempstead:

- 1. That it is hereby found and determined that the urban renewal areas comprising the Program are substandard or insanitary areas and tend to impair or arrest the sound growth and development of the Locality and qualify as eligible areas under Article 15 and Article XV-A of the General Municipal Law of the State of New York.
- 2. That the Urban Renewal Plan for the Program, having been duly reviewed and considered, is hereby approved, and the Town Clerk of the Locality be and he hereby is directed to file said copy of the Urban Renewal Plan with the minutes of this meeting. Attached hereto and made a part hereof is a true and correct copy of the Urban Renewal Plan presented at the meeting and approved by this resolution.
- 3. That it is hereby found and determined that where clearance is proposed that the objectives of the Urban Renewal Plan cannot be achieved through more extensive rehabilitation of portions of the urban renewal areas comprising the Program.
- 4. That it is hereby found and determined that the Urban Renewal Plan for the Program conforms to the general plan for the Locality.
- 5. That it is hereby found and determined that the financial aid to be provided pursuant to the contract for Federal financial assistance pertaining to the Program is necessary to enable the Program to be undertaken in accordance with the Urban Renewal Plan for the areas comprising the Program.
- 6. That it is hereby found and determined that the Urban Renewal Plan for the urban renewal areas comprising the Program will afford maximum opportunity, consistent with the sound needs of the Locality as a whole, for the renewal of the areas by private enterprise.
- 7. That it is hereby found and determined that the Urban Renewal Plan for the urban renewal areas gives due consideration to the provision of adequate park and recreational areas and facilities, as may be desirable for neighborhood improvement, with special consideration for the health, safety, and welfare of children residing in the general vicinity of the sites covered by the Plan.
- 8. That it is hereby found and determined that the Program for the proper relocation of individuals and families displaced in carrying out the Urban Renewal Plan in decent, safe, and sanity dwellings in conformity with acceptable standards is feasible and can be reasonably and timely effected to permit the property prosecution and completion of the plan; and that such dwellings or dwelling units available or to be made available to such displaced individuals and families are at least equal in number to the number of displaced individuals and families, are not generally less desirable in regard to public utilities and public and commercial facilities than the dwellings of the displaced

individuals and families in the areas comprising the Program, are available at rents or prices within the financial means of the displaced individuals and families, and are reasonably accessible to their places of employment.

9. That in order to implement and facilitate the effectuation of the Urban Renewal Plan hereby approved, it is found and determined that certain official action must be taken by this Body with reference, among other things, to changes in zoning, the vacating and removal of streets, alleys, and other public ways, the establishment of new street patterns, the location and relocation of sewer and water mains and other public facilities, and other public action, and, accordingly, this Body hereby (a) pledges its cooperation in helping to carry out the Urban Renewal Plan, (b) requests the various officials, departments, boards and agencies of the Locality having administrative responsibilities in the premises likewise to cooperate to such end and to exercise their respective functions and powers in a manner consistent with the Urban Renewal Plan, and (c) stands ready to consider to take appropriate action upon proposals and measures designed to effectuate the Urban Renewal Plan.

10. That financial assistance under the provisions of Title I of the Housing Act of 1949, as amended, is necessary to enable the land in the areas comprising the Program to be renewed in accordance with the Urban Renewal Plan for the Program, and, accordingly, the proposed Program and the Annual increment are approved and the Local Public Agency is authorized to file an application for financial assistance under Title !.

The vote on the foregoing resolution was recorded as follows:

AYES: Councilmen DaVanzo, Martin, Weinstein and Cunningham and Supervisor Tully

NAYS: None.

Councilman Martin offered the following resolution and moved its adoption, which resolution was declared adopted after a poll of the members of this Board:

#### RESOLUTION NO. 284 - 1972

A RESOLUTION OF THE TOWN BOARD OF THE TOWN OF NORTH HEMPSTEAD APPROVING OF THE ENTERING INTO AND THE EXECUTION OF A COOPERATION AGREEMENT FOR THE SPINNEY HULL NEIGHBORHOOD DEVELOPMENT PROGRAM.

WHEREAS, the Town of North Hempstead Urban Renewal Agency (herein called the "Local Public Agency"), with the cooperation of the Town of North Hempstead (herein called the "Town"), the Department of Housing and Urban Development of the Federal government and the Department of Housing and Community Renewal of the State of New York will undertake, develop, and carry out an urban renewal project identified as "Spinney Hill Neighborhood Development Program" (herein called the "Project"); and

WHEREAS, the Local Public Agency is about to enter into a contract with the said Department of Housing and Urban Development and the Department of Housing and Community Renewal for financial assistance for the Project; and WHEREAS, as a prerequisite to said contracts for financial assistance assurances of cooperation of the Town of North Hempstead are required,

NOW, THEREFORE, BE IT

RESOLVED by the Town Board of the Town of North Hempstead as follows:

- 1. That an agreement in writing, known as the Cooperation Agreement, be entered into between the Town of North Hempstead and the Local Public Agency for the Project in the form attached hereto and made a part hereof.
- 2. That the Supervisor of the Town of North Hempstead, or other duly authorized official of the Town of North Hempstead, be and he hereby is authorized and directed to duly execute the Cooperation Agreement for the Project for and on behalf of the Town of North Hempstead, and that the execution thereof be duly attested by the Clerk of the Town of North Hempstead who is hereby authorized and directed to affix the seal of the Town of North Hempstead thereto.
  - 3. That this resolution shall take effect immediately.

The vote on the foregoing resolution was recorded as follows:

AYES: Councilmen DaVanzo, Martin, Weinstein and Cunningham and Supervisor Tully

NAYS: None.



UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS, ROBERT CURRY, MRS. EVELYN BROWN, THOMAS BOLMES, MRS. EPPIE JOHNSON, WILLIAM HARRIS, MRS. ALBERTHA JOHNSON, MRS. ROSE WILLIS, MRS. SHARA BROWN, WILLIAM DORY, MRS. ELLA HARRIS, GEORGE ROSTRY and GREAT NECK MANOR CIVIC ASSOCIATION, and all others similarly situated,

Petitioners,

## -against-

CIVIL ACTION NO.

ROBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., GEORGE C. SOOS, FELIX G. ANDREWS, JOHN F. McDONALD, ARTHUR G. BINGHAM, WILLIAM H. RYAN, JR., TOWN OF MORTH HEMPSTEAD,

73 C 1104

REPLY

First Respondent,

HECTOR H. GAYLE, Executive Director, BERMARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK, LOCAL URBAN RENEWAL PLANNER.

Second Respondent,

JOHN MAYLOTT and GERALD V. CRUISE, DEPT. OF HOUSING and URBAN DEVELOPMENT,

Third Respondent,

The PETITIONERS, in and for their Reply to the SECOND RESPONDENTS' answer to the petitioners' complaint, set forth the fellowing:

#### REPLY TO FIRST DEFENSE

(1) SECOND RESPONDENTS allege that the complaint of the PETITICHERS fails to state cause of action upon which relief may be granted by the Court. The Petitioners submit that

their cause of action is based on the expenditures of Federal funds for the purpose of bringing shout racial concentration contrary to the Federal guidelines and contrary to the enlightened concept of scatter-site dwelling. That on its face as presently constituted, the plan is prima facie, at variance with the National Housing Policy and Section 601 of the Civil Rights Act of 1964, Title VI and will bring about an increase in racial segregation.

#### REPLY TO SECOND DEFEMSE

(2) It is further alleged that PETITIONERS herein do not have standing to bring or appear in the above action in that they are not an aggrieved party, have not suffered any damage or demonstrated any potention or enticipatory damage. It is submitted that the PETITIONERS in the within proceedings are owners of real properties and residents within the neighborhood of SPINNEY HILL, North Hempstead, New York, where the project is intended to be built. The real properties owned by the PETITIONERS are in the character of one family houses. It is therefore the contention of the PETITIONERS that the project would not only harm the one family character of the neighborhood houses, but also bring about an unconscionable burden upon the already over taxed Manhassett School District, thereby causing an additional tax burden for the PETITIONERS. The PETITIONERS, however, are among the class to be affected by the construction of the SPINNEY HILL project and have standing as aggrieved parties to be entitled to bring the above action.

#### REPLY TO THIRD DEFENSE

(3) It is alleged that PETITIONERS are guilty of "laches" in the presecution and commencement of this action over one year from the date of such public hearing and over one year from the date of the FIRST RESPONDENTS' legislative enactment on June 13, 1972, conserning said proposed housing project which lackes should in equity ber PETITIONERS from maintaining this action. It is the contention of the PETITIONERS that after the public hearing held on May 10, 1972, and in view of the PITIT-IOWERS' opposition to the said construction of the SPIMMEY HILL preject, the SECOND RESPONDENTS, the LOCAL URBAN RENEWAL AGENCY. made a verbal premise that they would be recommending an altermete site. There was not the slightest indication that the said verbal promise would not be honored. It was only when the site for the construction was being cleared and property privately owned was being acquired that the PETITIONERS realized that RESPONDENTS were not going to abide by their verbal promise and the clearance of the site took place loss than a year after the commencement of this presending. Besides, the PETITIONERS are bringing this setion to assert their constitutional right and time is not of essence in a proceeding to test the constitutionalty of this procedure and therefore the PETITIONERS are not and cannot be guilty of laches.

#### ZEPLY TO FOURTH DEFENSE

The PETITIONERS, contrary to the allegation of the SECOND RESPONDENTS, have demonstrated the requisite standing as

an aggriswed class to entitle them to injunctive relief and therefore the proceeding herein cannot and should not be construed as a proceeding against a body or officer pursuant to Article 78 of the New York Civil Practice Laws and Rules. This action is based on the constitutional rights of the PETITIONERS and therefore Article 78 of New York Civil Practice Laws and Rules is inapplicable.

# REPLY TO FIFTH DEFENSE

The PETITIONERS were advised by HON. JOHN R. BARTELS to make a formal complaint to the Department of Housing and Urban Development and therefore is ludierous for the SECOND RE-SPONDENTS to allege that the complaint was improperly commenced and not timely filed.

WHEREFORE; PETITIONERS respectfully request that their complaint be seriously considered.

Yours, etc.

ROBERT RIVERS
Attorney for Petitioners
Office 6 P.O. Address
287 Post Avenue
Westbury, R.Y. 11590

TO: RESSA & NAPPI
Attorneys for Second Respondents
Office & P.O. Address
33 Main Street
Port Washington, N.Y. 11050
UNITED STATES ATTORNEY
225 Cadman Plaza
Brooklyn, New York

RICHARD J. OSTEHHDORF, ESQ. Counsel to Francis F. Doram Town Attorney of the Town of No. Hempstead Attorney for First Respondent 220 Plandome Road Manhasset, New York

The undersigned attorney certifies that the within has been compared by the undersigned with the original and that it is a true and complete copy

Dated .

STATE OF NEW YORK COUNTY OF

#### AFFIRMATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the courts of New York State, states, that deponent is

the attorney(s) of record for in the within action; that deponent has read the foregoing and knows the contents thereof; that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief; and that as to those matters deponent believes them to be true Deponent further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

STATE OF NEW YORK. COUNTY OF

INDIVIDUAL VERIFICATION

, being duly sworn, deposes and says that deponent is the in the within action; that deponent has read the foregoing and knows the contents thereof, that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true

Sworn to before me, this

day of

STATE OF NEW YORK. COUNTY OF

# CORPORATION VERIFICATION

, being duly sworn, deposes and says that deponent is the

named in the within action; that deponent has read the foregoing and knows the contents thereof, and that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes them to be true

### AFFIDAVIT OF SERVICE OF MAIL

STATE OF HEW YORK COUNTY OF MASSAU

Eileen Petrelli, being duly sworn, deposes and says that deponent is over the age of 18 years, is not a party to the action and recides at Uniondale, New York.

27th day of September, 1973, That on the

ent served the within REPLY RESSA & MAPPI

uponi

Attorneys for Second Respond 33 Main Street, Port Washington, N.Y. 11050

RICHARD OSTERNOORF, Attorney for First Respondent 220 Plandome Rd, Manhasset, M.Y. 11030

United States Attorney 225 Cadmen Place Brooklyn, N.Y.

the within action at the address designated by said attorney by depositing the same in a postpaid wrapper in an official depository of the United States Post Affice in the State of How York.

Sworm to before me this day of Kept 1973

#### UNITED STATES DISTRICT COURT LASTEAN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF WILLIAM JONES, CLARENCE BERIS, MARY HOBBS, ROBERT CURRY. MRS. EVELYN BROWN, THOMAS HOLMES, MRS. EPPIE JOHNSON, WILLIAM HARRIS, MRS. ALBERTHA JOHNSON, MRS. ROSE WILLIS, MRS. SHARA BROWN, WILLIAM DORY, MRS. ELIA HARRIS GLUNGE MOSTKY and GREAT NECK MANOR CIVIC ASSUCIATION, and all others similarly situated.

Petitioners,

-against-

CIVIL ACTION NO.

MOBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., GEORGE C. SOOS, FELIX C. ANDREWE, JOHN F. MEDONALD, ARTHUR G. BIRGRAM, WILLIAM H. KYAN, JR., TOWN OF MORTH HEMPSTEAD.

73 C 1104

EPLY

First Respondent,

HECTOR H. GAYLL, Executive Director, BERTHARD GARTLER, Chairman, JUSEPH CECI, Dr., GURTIS KENDRICE, LUCAL URBAN ARTHWAL PLANNER.

Second Respondent.

JOHN MAYLOTT and GLHALD V. CRUISE, DEPT OF HOUSING and URBAN DEVELOPMENT.

Third despondent,

The PETITIONERS, in and for their keply to the FIRST RESPONDENTS' answer to the PETITIONERS' complaint, set forth the following:

#### REPLY TO FIRST DEFENSE

(1) FIRST RESPONDENTS allege that the complaint of the PETITIONERS fails to state cause of action upon which relief may be granted by the Court. The PETITIONERS submit that their cause of action is based on the expenditures of Federal funds for the purpose of bringing about racial concentration contrary to the Federal guidelines and contrary to the enlightened concept of scatter-site dwelling. That on its face as presently constituted, the plan is prima facie, at variance with the National Housing Policy and Section 601 of the Civil Rights Act of 1964, Title VI and will bring about an increase in racial segregation.

# SUPLY TO SECOND DEFINEE

(2) It is further alleged that PETITIONERS herein do not have standing to tring or appear in the above action in that they are not an aggrieved party, have not suffered any damage or demonstrated any potential or anticipatory damage. It is submitted that the PETITICHERS in the within proceedings are owners of real properties and residents within the neighborhood of SPINNEY HILL, North Hempstead, New York, where the project is intended to be built. The real properties owned by the PETITIONERG are in the character of one family houses. It is therefore the contention of the PETITIONERS that the project would not only harm the one family character of the neighborhood houses, but also bring about an unconscionable burden upon the already over taxed Manhasset School District, thereby causing an additional tax burden for the PETITIONERS. The PETITIONERS, however, are among the class to be affected by the construction of the SPINMEY HILL project and have standing as aggrieved parties to be entitled to bring the above action.

#### REPLY TO THIRD NAVESE

(3) It is alleged that PETITIONERS are guilty of "laches" in the prosecution and commencement of this action over one year from the date of such public hearing and over one year from the date of the FIRST RESPONDENTS' legislative enectment on June 13, 1972, concerning said proposed housing project which laches should in quity ber PETITIONERS from maintaining this action. It is the contention of the PETITIONERS that after the public hearing held on May 10, 1972, and in view of the PhTIT-IGNERS' opposition to the said construction of the SPINNLY HILL project, the SECOND RED. CHOLINTS, the LOCAL URBAN RENEWAL AGENCY, made a verbal promise that they would be recommending an alternate site. There was not the slightest indication that the said verbal promise would not be bonored. It was only when the site for the construction was being cleared and property privately owned was being acquired that the PETITIONERS realized that RESPONDENTS were not going to abide by their verbal promise and the clearance of the site took place less than a year after the commencement of this proceeding. Besides, the PETITIONERS are bringing this action to assert their constitutional right and time is not of cosence in a proceeding to test the constitutionalty of this procedure and therefore the PETITIONA'S are not and cannot be guilty of laches.

## REPLY TO POURTE DEFENSE

(4) The PETITIONERS, contrary to the allegation of the FIRST RESPONDENTS, have demonstrated the requisite standing as an aggricood class to entitle them to injunctive relief and therefore the proceeding herein cannot and should not be construed as a proceeding against a body or officer pursuant to Article 78 of the New York Civil Practice Laws and Rules. This action is based on the constitutional rights of the PETITIONERS and therefore Article 78 of New York Civil Practice Laws and Rules is inapplicable.

# REPLY TO FIFTH DEFENSE

(5) The PETITIONERS were advised by HOR. JOHN M.
BARTELS to make a formal complaint to the DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT and therefore it is ludicrous for the
FIRST RESPONDENTS to allege that the complaint was improperly
commenced and not timely filed.

## REPLY TO SIXTH DEFENSE

(6) It must be noted that this action is a proceeding against the Town of North Hempstead and not the officials of the Town of North Hempstead in their private capacity and as such, the only source to indicate the officials of the Town of North Hempstead is a booklet and various publications of said Town which state categorically those named as FIRST RESPONDENTS as officials of the Town of North Hempstead and if for any reason

those officials are not now associated with the Town of North Hempstead, that factor is not germane to the question of jurisdiction herein.

where Fore; PETITIONERS respectfully request that their complaint be seriously considered.

Yours, etc.

ROBERT RIVERS
Attorney for retitioners
Office & P.O. Address
287 Post Avenue
Westbury, N.Y. 115.0

Town Attorney of the Town of No. Hempstead Attorney for First Respondent Town Lull, 220 Plandome Road Manhasset, New York 11030

RESSA & NAPPI Attorneys for Second Respondents Office & F.C. Address 33 hain street Fort Washington, D.Y. 11000

UNITED STATES ATTORNEY 225 Cadman Haza Brooklyn, Lew York

1	UNITED STATES DISTRICT COURT	1	(	
2	EASTERN DISTRICT OF NEW YORK			
3	TN MUE NAMMED OF MUE AND TON			
4	IN THE MATTER OF THE APPLICATION OF WILLIAM JONES, ET AL.,			
5	- vs -	73	С	1104
6	R. MEADE, ET AL.			
7	X			
8	United States Courthouse Brooklyn, New York			
9	August 31, 1973			
10	10:00 A. M.			
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13				
14	Before:			
15	HON. JOHN R. BARTELS, U. S. D.	J.		
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Ilene Ginsberg Acting Official Court.Reporter

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# APPEARANCES:

ROBERT RIVERS, ESQ. 287 Post Avenue

Attorney for plaintiff Westbury, New York

RICHARD J. OSTEFADORF, ESQ. Attorney for respondent Meade 220 Plandome Road Manhasset, New York 

RALPH A. NAPPI, ESQ. Attorney for respondent Gayle 33 Main Street Port Washington, New York 

ROBERT A. MORSE, U.S. ATTORNEY

By: HAROLD FRIEDMAN, AUSA

of the application of William Jones, et al.

versus Meade, et al.

MR. RIVERS: Your Honor, it it please the Court, we made the original motion for declaratory judgment and preliminary injunction relative to a housing project to the built in Spinny Hill.

Subsequent to our motion application by order to show cause a motion was made for summary judgment by the first respondent, the Town of North Hempstead. So I am in a position where I am arguing for our motion and against the summary motion.

I point out to the Court at the outset that the people I represent, the Manor Civic Association and the individual petitioners acknowledge the need for housing in Nassau County in general and the Town of North Hempstead in particular.

I point out further that the cases all indicate and our pleadings indicate that there is a minority concentration in the sight area, that is, in Spinny Hill and the case of Shannon

versus the United States, cited in our brief and I think cited in some of the other briefs indicate that when there is a maintenance of racial concentration it is, primafacie, likely to lead to urban blight.

THE COURT: Don't you have a procedural question to be answered?

MR. RIVERS: Yes. The issue here has been brought on for summary judgment and there is a request for dismissal based on the fact that, according to motion papers, the respondent indicates latches on the part of the petitioner and further the petitioner did not follow the inter-agency method of complaint and did not appeal through the agency.

I point out to the Court and I have prepared an affidavit to the effect -- with original documentation and I would like to hand it up to the Court and give copies to my adversaries.

THE COURT: I understood that there was a problem of resorting first to the administrative agency.

MR. RIVERS: We appealed through HUD.

We commenced a complaint to HUD by way of letter to the Secretary of Housing in Washington D.C.

THE COURT: Is that sufficient? Don't you have to file a complaint?

MR. RIVERS: We commenced by way of letter and we have the original copy of our letter there and the response from the housing agency in the federal government. The letters were addressed to Mr. Maylott in September of 1972. Subsequent to that time a meeting was held in the HUD office at 120 Church Street and a memorandum of that meeting is contained in our papers.

At that time all the representatives of HUD appeared there.

THE COURT: Are you saying that you went through the administrative procedure?

MR. RIVERS: I am saying if I have different contacts -- two meetings, three letters of correspondence and we made complaint to HUD and the documentation is before the Court --

THE COURT: What do you say?

MR. FRIEDMAN: I am Harold Friedman. I represent the United States Department of Housing

and Urban Development and it is their position that the procedures outlined in 24 cfr 1.7.B have not been complied with and we would like to see a formal complaint, if the petitioner so desires, so that HUD could look at whatever information they might have to submit. They are always willing to be further enlightened.

THE COURT: No. The question is whether he has or has not followed the procedure suggested or perhaps required by 24 cfr section 137.B.

MR. OSTERNDORF: If your Honor please, I represent the Town of North Hempstead, first respondent.

Counsel's cwn affidavit in opposition to the motion for summary judgment executed August 29, 1973, on page three therein, your Honor, there is a statement concerning contact with HUD.

THE COURT: Wait just a minute. Let's see.

(pause)

THE COURT: It starts out:

"Robert Rivers, an attorney duly admitted to practice of law in the State of New York" -You are a member of this court?

MR. RIVERS: Yes I am.
THE COURT: The reason I asked is because
you say here you are admitted to the practice of
the courts of this state.
MR. RIVERS: I didn't dictate that part.
THE COURT: All right. Where are we?
MR. OSTERNDORF: Page three.
THE COURT: "Practice in housing be
reviewed and handled"
MR. OSTERNDORF: No, sir. Actually,
it starts on page two and goes over to page three:
"That it is alleged that the petitioners
did not ask for nor request a hearing before the
third respondents."
T COURT: I don't have it here. The
latest have is August 13th.
MR. OSTERNDORF: This is August 29.
MR. RIVERS: Yes, the 29th.
MR. NAPPI: May I approach the bench? I
have a copy here.
THE COURT: Well, I don't have it.
Did you file this?
MR. RIVERS: Yes, it was sent in.
THE COURT: Well, let me have your copy.

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(pause)

THE COURT: Now, where is it?

MR. OSTERNDORF: Page three.

THE COURT: Well, it's not numbered.

MR. OSTERNDORF: It is the third page.

THE COURT: "The petitioners and your affirmant requested a meeting with the said third respondent to see if the proposal of the Spinny Hill project could be reviewed.

"The said request was granted and the petitioners had their first meeting with the third respondents on September 8, 1972, and their second meeting on June 18, 1973.

"After a long discussion with the said third respondents, the decision to construct the project was upheld and the petitioners were even advised by the said third respondents that the only course left to the petitioners is to institute this proceeding."

Do you agree?

MR. OSTERNDORF: At this point I am asking and I am submitting to the Court that the statements in that affidavit are possibly at variance with the statements made now and the affidavit

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"We have had two meetings and two contacts" and now it has become a whole series of different meetings on different dates.

MR. RIVERS: I didn't say that.

THE COURT: It makes no difference.

The question is was a complaint properly filed with HUD so that they have had a chance to look at it administratively or was there not such a complaint so that what we are talking about is some informal discussions rather than a formal complaint.

MR. RIVERS: If you review the documentation before the Court --

THE COURT: Do you have a copy of the complaint you filed?

MR. RIVERS: Yes. I addressed a letter first on June 20, 1972 to Secretary Romney. Subsequent to that I was advised to contact Mr. Maylott, the area district director.

THE COURT: Letme get the first letter. What exactly is that?

MR, RIVERS: That would be the first exhibit. Exhibit A.

THE COURT: Is that June 20?

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2	MR. RIVERS: June 20.
3	THE COURT: "This office represents the
4	above-named, who are concerned about the Spinny
5	Hill Development Project, in Great Neck, Long
6	Island, New York.
7	"I am requesting on their behalf, an
8	appointment with your office as early as possible
9	to discuss the above matter."
10	That is not a complaint.
11	MR. RIVERS: Subsequent to that I was
12	referred to Mr. Maylott.
13	THE COURT: Where is that? Is that
14	September 13?
15	MR. RIVERS: That is the letter I wrote
16	to Mr. Maylott but of course, we have a copy
17	of the letter from Washington.
18	THE COURT: Well, here is a letter to
19	Mr. Maylott signed by you on September 13, 1972.
20	Is that what you are talking about?
21	MR. RIVERS: No. The correspondence
22	which is exhibit
23	THE COURT: What exhibit?
24	MR. RIVERS: D, I believe.
25	MR. FRIEDMAN: I think it is important to

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read the letter of September 13, 1972.

THE COURT: All right. Let's read it:

"As you recall, during our conference at your office with the president and members of the Great Neck Manor Civic Association, the issue arose regarding the policies of your agency as it relates to the possible contributions that the proposed Spinny Hill Urban Renewal Project would make to minority racial concentration of the area.

"It is the feeling of this group of residents that the proposed project would contribute extremely to minority concentration without providing sufficient opportunity for minority housing outside of the area of minority concentration, in direct contravention of HUD'S criteria and the 1964 and 1968 Civil Rights Laws.

"Please be kind enough to outline the policies of the Housing and Urban Development Agency as it relates to the Spinny Hill Project specifically and racial concentration in general."

Well, what did you want me to read that for?

> MR. FRIEDMAN: I think what the letter

2 requested was that HUD inform the petitioners 3 of its policy with regard to the project. 4 We have a twofold requirement under the 5 regulations; first, that there be a complaint and second, that HUD investigate it. HUD, has 6 not investigated anything that is purported to 7 8 be a complaint. 9 THE COURT: That doesn't mean he hasn't 10 filed a complaint. 11 If you file a complaint -- did you or 12 didn't you file a complaint? 13 MR. RIVERS: It was a series of communi-14 cations and meetings. 15 THE COURT: Why don't you file a formal 16 complaint and get a formal answer and you can 17 come here. 18 MR. RIVERS: Would you bear with me for 19 a moment? 20 THE COURT: A couple of moments. 21 MR. RIVERS: On October 5, 1972 --22 THE COURT: What exhibit? 23 MR. RIVERS: Exhibit D. I believe. 24 MR. FRIEDMAN: I don't believe I have 25 that one.

2 MR. RIVERS: This is the letter --3 THE COURT: Is that September 22. 4 Mr. Rivers? 5 MR. RIVERS: October 5, 1972 after the 6 meeting. 7 THE COURT: October 5, you say? 8 MR. RIVERS: Yes, on HUD stationery 9 MR. NAPPI: I don't have it. 10 , THE COURT: When did you file this, 11 Mr. Rivers? Did you file this? 12 MR. RIVERS: It was filed and the mailing 13 affidavit is made out, Judge. 14 Part of the problem is I was on vacation 15 and the office had to do these things. Perhaps, 16 in advertently, this was not sent out to counsel. 17 THE COURT: It doesn't make a difference 18 except if we are missing a copy then we would need 19 another copy. 20 (pause) 21 THE COURT: I am advised by my law clerk 22 is was sent directly to chambers and without 23 looking at it we sent it down for filing. Perhaps 24 it is down there now. Anyway, my law clerk thinks 25

we got it. Right now, I have this copy so you

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don't have to bother about that. 2 3 Now, 5 October, '72, it is from Gerald V. Cruise, the program manager --Δ 5 MR. RIVERS: But Martin Siegel's name is signed to it. 6 THE COURT: Who is he? 7 MR. RIVERS: He would be the area 8 director. 9 MR. FRIEDMAN: No. 10 11 MR. RIVERS: The second paragraph. THE COURT: "It should be understood 12 that subsidized housing construction may take 13 place in areas that already contain a concentra-14 15. tion of minority and lower income families. provided comparable housing opportunities are 16 afforded such families elsewhere in the Town." 17 18 Mr. Rivers, these are generalities and 19 not addressed to this particular project. They 20 have had no opportunity to point you or pass 21 on it. 22 I think, my opinion, from looking --23 well, let's take a look at the third paragraph: "At such time as a definitive housing 24 25 proposal is received by this office, same will

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be rated --"

What does that mean?

MR. FRIEDMAN: If there is federally subsidized housing it will be reviewed and rated with a view toward whether it complies with the Shannon case and the '68 and '69 act.

But, we don't have federally subsidized housing but rather, a state, Mitchell-Lama state housing program.

MR. RIVERS: It has been indicated that Hud takes a position that we may spend three million dollars to clear the site but not build the property. Therefore, we wash our hands of the thing.

THE COURT: Have they done it?

MR. RIVERS: They have funded one point four million dollars.

THE COURT: Have they cleared the site?

MR. RIVERS: They are in the process.

MR. FRIEDMAN: I can represent that HUD has guaranteed funds for the acquisition of the property and I think Mr. Nappi can tell you the property has been acquired.

MR. NAPPI: Yes, it has.

THE COURT: They haven't knocked down buildings?

MR. RIVERS: No. They are splitting hairs here and saying "We won't use the money to build because state funds are going to build" but federal funds are being utilized for the same purpose.

THE COURT: There are cases indicating these guidelines must be followed.

MR. NAPPI: No question about that.

THE COURT: Mr. Rivers, I think, if you have a cause of action and you may very well have, that the best way to protect your rights is to follow this procedure because there is still time to file a complaint.

This, in my opinion, is not a complaint.

You know, you couldn't file letters and

start an action against some defendant --

MR. RIVERS: We have had two meetings.

THE COURT: They don't mean anything.

File a complaint, get an order, provided you can do so.

Will they waive the 90 days?

MR. FRIEDMAN: In this case we would

MR. FRIEDMAN: In this case we wo

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waive the 90 day period but we will not waive any claims to judicial latches which involve the administrative claim.

THE COURT: Whatever that means.

MR. FRIEDMAN: There may have been administrative latches on the part of the petitioner in not filing the complaint with the federal agency.

THE COURT: If you are going to ask him to file it, which perhaps he should have done -I don't know why you didn't -- and you are waiving the time limit, you cannot put him in a position where he cannot take advantage of all the rights he has.

MR. FRIEDMAN: No. I say, we will allow him his administrative remedies.

THE COURT: Well, this is what I had in mind -- it is like a social security administrative proceeding and a number of others -- I don't have to follow what they suggest at all but if I have their findings one way or the other, I am in a better position if we subsequently have to have a hearing on it, to know what their recommendations are and why.

Now, I don't want to side-step that if the law requires it. I don't know how long it would take.

On the other hand, if he waived the time limit you have to put him in the same position he would be in if the time had not expired.

Don't you think so?

MR. FRIEDMAN: Yes.

THE COURT: I didn't know what you were talking about a little while ago.

MR. FRIEDMAN: I am talking about the claim before this Court that judicially, in the legal proceeding before the Court, the petitioners are barred under the doctrine of latches.

MR. RIVERS: I don't understand that because in the affidavits they submitted they indicated they did not approve the project --

MR. FRIEDMAN: That is precisely it.

You had ten months.

MR. RIVERS: During that period of time we were meeting with your people who signed and who also presided at the meetings.

MR. FRIEDMAN: October 5 was the last letter.

MR. RIVERS: No. There were letters 3 as late as July, '73 and September, '72 was the earliest and HUD met with us and we made complaints and it is in their own handwriting as part of the exhibits in this last affidavit. MR. NAPPI: There is a very real issue in terms of latches from what I gather. I was just served papers this morning. I represent the Urban Renewal Agency, your Honor. THE COURT: Didn't I have a representative of your office here with respect to topless dancers? MR. NAPPI: Yes. Your Honor, the last correspondence I have seen, anyway, was a letter dated, I think, in 1972 and then Mr. Rivers received something in June of '73. We would like to know what happened in the interim. The agency has expended approximately eight hundred thousand dollars to purchase land. We have a developer for the project. He is

before the state agency for the necessary

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approvals at this moment. So, we are in a very difficult position here, your Honor.

In addition, some of the people served are no longer in their present capacity --

MR. RIVERS: Part of the situation is a result of the fact that we were lulled into the position that the association and the persons owning homes were told that the Town intended to comply by finding an alternate site.

No one broached the argument that this is de facto segregation.

The main point becomes technical;
whether or not the persons served are still in
government and we cannot keep up with the musical
chairs in government.

THE COURT: Well, I suppose in the first place there is some or quite a number of blacks that don't think you represent them and another thing, is that there are blacks who have nice homes there and they believe this project might involve a situation whereby their nice homes in the neighborhood might be ruined if this is a low cost housing development. Rather than race, it might be class.

MR. RIVERS: That is not the issue here.

THE COURT: I don't know the situation.

I haven't been out there and know nothing about it but there are all possibilities here.

Now, let's keep the ducks and drakes in order. Why don't you quickly file a complaint with HUD and they are willing to waive the time limit and why don't you see what happens. I think that would be helpful.

Let's suppose I take this case immediately and hear evidence and decide in your favor and I find later on appeal that this was all irregular; that you should have committed HUD to at least look it over and give its reasons and therefore, it is thrown out. You have in that case, gotten nothing.

The real question is and another question I ought to pose to you: it may be that it isn't necessary, absolutely necessary, that you file a complaint with HUD. Maybe it is not one of those sine quo non but only a permissive procedure in which case the Court could ignore it and proceed to the merits.

MR. FRIEDMAN: I call your Honog's

attention to Ogeltree v. MacNamara. In that case the charge was racial --

THE COURT: Do they say that the proceeding is absolutely necessary?

MR. FRIEDMAN: It is not with regard to

HUD itself. It is a civil rights charge; discrimination in employment and they have remedies.

THE COURT: But did they say the procedures must be followed first?

MR. FRIEDMAN: Yes, they did.

MR. RIVERS: Let me point out to the Court it is not a class struggle.

There is housing needed there and we want scattered housing.

with regard to the blacks I don't represent, one was Mr. Holmes who signed his name, number ten on the affidavit. He is a real estate speculator. The others are persons working directly for Urban Renewal. I represent the persons whose names are there.

THE COURT: I am talking about the overall phrase "those similarly situated." We will have to find out who you represent ultimately, but that doesn't prevent the suit even if you

represent only one person.

MR. RIVERS: I understand, but I represent the two hundred fifty people, the members of the Manor Civic Association.

THE COURT: We will find that out, ultimately.

MR. RIVERS: I would ask the Court to hold this decision in abeyance while I proceed through that procedure --

MR. OSTERNDORF: The Town of North

Hempstead is not willing to waive any review.

There are a number of cogent reasons for it.

June, 1972, your Honor, after a series of hearings the Town of North Hempstead gave a go ahead to this --

THE COURT: Are you in a position to object?

MR. OSTERNDORF: I believe so.

They are seeking to enjoin the parties from performing their duties well over one year after a definitive legislative act took place.

THE COURT: You didn't spend money?

MR. OSTERNDORF: We have a dollar commitment. There are closed streets. There is

work being done with the agency.

The dollar commitment must be raised through taxes and we have committed ourselves.

THE COURT: TO HUD?

MR. OSTERNDORF: No. We are required to match certain grants in dollar amounts.

THE COURT: That HUD gives?

MR. OSTERNDORF: Yes and the state of

New York and we have to match a certain percentage.

The money has been raised and expended.

We are in the position right now where the Town Board made a commitment June 13, 1972, and over a year later that action is being challenged.

I know my summary judgment has been attacked but I think the law has been hit time and time again and legislative acts should not be overturned unless capricious or arbitrary and fourteen months is a long time to make the government sit on a fence.

The ery genesis is "sit on the fence until we are ready to challenge your actions" and no government can survive that way.

These hearings and the minutes -THE COURT: What hearings and minutes?

MR. OSTERNDORF: We have a hearing where two hundred twenty-five people appeared and then two weeks later another meeting and they heard all the testimony before they moved, adopted the resolution and committed the Town to this project.

To allow them to wait thirteen or fourteen months and then challenge it flies in the face of reason. It doesn't permit us sound government.

The substance of the attack is "We are" -to quote the language in the complaint -- "We
are colonizing blacks."

We have taken a commitment for low housing. It is in Roslyn Manor and Port Washington. This is middle-low income housing with some senior citizens. If this is a black ghetto — two blocks away is the Pond Hill Apartments which are sixty percent black and forty percent write and there is a waiting list to get in.

I don't think it does justice to the people who have to live in basements that the project should be built someplace else.

MR. RIVERS: Your Honor, we have been

2 assured by the Town Superintendent and the people 3 making up the Town that an alternate site was 4 chosen and the development would parallel the 5 Spinny Hill Project. 6 THE COURT: Would that mean the elimination of Spinny Hill? 8 MR. RIVERS: No. You would have an 9 escape valve not only in Spinny Hill but an 10 alternate site. 11 MR. FRIEDMAN: There are alternate 12 sites. 13 MR. NAPPI: We have right now a situa-14 tion where the Town approved and sent to HUD 15 for its approval, a site in Water Mill, a lily-16 white, if you will, area, in Great Neck. 17 MR. RIVERS: But it has not been acquired. 18 THE COURT: Now, you see, you are 19 ignoring my suggestion. 20 He doesn't agree to it but I don't know 21 if we need his waiver as far as a HUD hearing 22 is concerned. 23 MR. NAPPI: I don't agree either. 24 MR. OSTERNDORF: I ask for a decision 25 on my summary judgment and dismiss all of

the action.

MR. RIVERS: Your Honor, there is prejudice to the rights of the association here.

THE COURT: If the government waives its objection to you, Mr. Rivers, filing a complaint I will permit you to file a complaint provided we get a hearing with HUD within the next 90 days. That won't hurt --

MR. NAPPI: It would hurt us. We have a developer proceeding in court now and who has spent quite a b : of money on this project.

THE COURT: What kind of proceeding?

MR. NAPPI: He is before the state getting approval for the Mitchell - Lama.

THE COURT: He has not started?

MR. NAPPI: He is in the middle.

THE COURT: Has he torn down any houses?

MR. NAPPI: No.

THE COURT: Then you are talking about his getting paper permission.

MR. NAPPI: He has architectural plans.

THE COURT: But no bulldozers there

knocking down houses?

MR. NAPPI: No.

2	MR. OSTERNDORF: There is one due to
3	be taken down.
4	MR. NAPPI: The damage to the people
5	living there right now
6	MR. RIVERS: We are not indicating
7	this is not a blighted area.
8	They are allowed to live there. We
9	want it developed but not under the circumstances
10	Your Honor, they are talking about an
11	alternate site
12	THE COURT: I am not going into that.
13	I am just going into this one point: How long
14	would it take HUD to look into the thing?
15	MR. FRIEDMAN: It should not take too
16	long. HUD already looked at this site with a
17	view toward a Civil Rights Act.
18	THE COURT: What I will do then is
19	that I will give you, Mr. Rivers, permission to
20	file a complaint by next Tuesday or Wednesday.
21	MR. FRIEDMAN: That is with the Regional
22	Director of HUD.
23	THE COURT: Thirty days. I am going to
24	do that and I will make a statement for the
25	record:

The plaintiff in this case moves for preliminary injunction restraining one group of defendants, that is the Urban Renewal Planners, from constructing a one hundred Urban Renewal. Project in the Spinny Hill area of North Hempstead, Nassau County, New York and some of the plaintiffs are individuals owning property in the general area of the proposed project and are opposed to the construction of the project.

It appears that at least three of these named plaintiffs are not opposed to the project and they do not wish to be represented by Mr. Rivers, who filed the action and they are not properly named as plaintiffs.

Now, the Great Neck Civic Association may also, as far as I know, be improperly named as a plaintiff herein but I won't rule on that issue in the present posture of the case --

MR. OSTERNDORF: We attack this in our application --

THE COURT: Let me finish.

This complaint alleges that the project is in violation of section 601, Civil Rights
Act of 1963 codified 42 U.S. C section 2000 d

shall, on the ground of race, color or national origin be subjected to discrimination under any program or activity receiving federal financial assistance. Of course, there is no question this project is receiving federal financial assistance.

Now, the plaintiffs claim that by putting up a project with seventy percent blacks near their homes the defendants will subject them to discrimination and increase a concentration of blacks in this area of North, Hempstead and that will be contrary to the enlightened concept of scattered site dwellings.

argument: That the Town of North Hempstead has submitted to HUD evidence that it has constructed and will construct public housing outside of minority racial concentration and that the proposed project will not have the racial impact upon the area as claimed by the plaintiffs, since the project is being constructed on a site where the number and percentage of black families was previously larger than that which will result from

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the proposed project and that the construction of the project is not federally funded -- although the land acquisition was funded by HUL) -- and thus, HUD need not approve the site.

The plaintiffs are guilty of latches in bringing this action more than one year following the approval of the site by the Town of North Hempstead and plaintiffs had failed to exhaust their administrative remedies.

## 42 U.S. C section 2000 states:

"Each federal department and agency which is empowered to extend federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guarantee, is authorized and directed to effectuate the provisions of section 2000 d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President."

This procedure is set forth in 24 CFR 1.7b:

"Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part one may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee."

### Section 1.11 states:

"Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act."

42 U.S. C section 2000 d (2), which is section 603, Civil Rights Act of 1964, states:

"Any Department or Agency action taken pursuant to section 2000 d - 1 of this Title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such Department or Agency on other grounds."

Now, that seems to me, gentlemen, to indicate that the Court should not make any review of the situation until the administrative agency has time to act. Otherwise, it seems to me there is no point in talking about judicial review if the plaintiffs have the right to immediately rush into court without first giving the agency an opportunity to render some type of disposition on the complaint.

In the instant case the plaintiff is seeking injunctive relief although, it seem to this Court, the plaintiff has filed no written complaint with HUD as specified in 24 CFR section 1.7d.

It is undisputed that construction is not scheduled to begin on the project until at least, as I understand it, November, 1973.

MR. NAPPI: No. We expect construction to start within approximately eight months.

THE COURT: There is something in the papers, it seems to me --

MR. NAPPI: Not from Urban Renewal.

THE COURT: Mr. Rivers?

MR. RIVERS: No. I didn't say anything

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about that.

THE COURT: When will construction begin?

MR. NAPPI: Within eight months.

THE COURT: From now?

MR. NAPPI: Yes.

THE COURT: That is plenty of time for him to file a complaint and find out what the administrative agency is going to do.

I am going to bend backwards to give him every opportunity for HUD to look at it.

HUD is willing to waive the 90 days limitation to file the complaint --

MR. FRIEDMAN: Correct, your Honor.

THE COURT: Under the circumstances the plaintiff will be required to pursue this admininstrative remedy through normal channels before seeking relief in this Court and I therefore give the plaintiff a maximum of one week to file a written complaint with HUD, setting forth its grievances as outlined to this Court and I will request HUD, through Mr. Friedman, to have a hearing within a week thereafter and give us a decision on this matter within 30 days after the complaint is filed.

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MR. FRIEDMAN: Your Honor, I think that what is required, under the regulations, is that HUD investigate the complaint and not necessarily --

THE COURT: Whatever the procedure is. I don't attempt to change that. Investigate the complaint and make a report. I have to have that report.

Therefore, under the circumstances, the plaintiffs' motion for a preliminary injunction will be denied without prejudice to renew the same following the exhaustion of its administrative remedies.

Let the record show that the Town of North Hempstead objects to this as well as the Urban Renewal Agency.

MR. OSTERNDORF: In my motion, there are a number of parties sued individually in their capacity and they are not proper defendants because they are no longer serving in these capacities.

One is a New York State Supreme Court Judge --

THE COURT: Are you saying a New York State Supreme Court Judge? You are not going

to sue me, Mr. Rivers?

MR. RIVERS: Mr. Meade was the supervisor of the Town of North Hempstead and now he is a Supreme Court Judge; Robert Meade. I know him personally.

You see, Judge, I can't do every pleading in my office. They make up a form --

THE COURT: Why don't you work it out. You don't need all these people.

MR. OSTERNDORF: Would your Honor make a specific ruling for the Town of North Hempstead with regard to summary judgment at this time?

THE COURT: I will decide, as I did the other motions, subject to the conditions I have set forth.

MR. OSTERNDORF: I would respectfully except.

Without waiving the Town's objections, the Town of North Hempstead requests that it be given notice of hearings to any complaint and we will appear without waiving our objection.

THE COURT: There is no question about that. He is going to give everyone notice.

MR. RIVERS: I have to. They are parties.

THE COURT: Now action must be fast.

You must remember that Mr. Nappi, his clients,
he indicates, are chafing at the bit to start
work. Of course if he gets an adverse decision
that ends it but if it is favorable that's a lot
of time.

Where is this HUD office?

MR. OSTERNDORF: The Water Mill site --

MR. FRIEDMAN: No. The office is at 26 Federal Plaza.

THE COURT: Then no one has to go to Washington.

# UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF VILLIAM JONES, CLARENCE BRRIS, MARY HOBBS, ROBERT CURRY, MRS. EVELYN BROWN, THOMAS HOLMES, MRS. EPPIE JOHNSON, WILLIAM HARRIS MRS. SHARA BROWN, WILLIAM DORY, MRS. ELLA HARRIS. GEORGE ROSTKY and GREAT NECK MANOR CIVIC ASSOCIATION. and all others similarly situated,

Petitioners.

#### - against -

Civil Action No. 73C 1104

ROBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., GEORGE C. SOOS, FELIX G. ANDREWS, JOHN F. MCDONALD, ARTHUR G. BINGHAM, WILLIAM H. RYAN. JR., TOWN OF NORTH HEMPSTEAD,

First Respondent,

HECTOR H. GAYLE, Executive Director, BERNARD GARTLER Chairman, JOSEPH CECI DR. CURTIS KENDRICK, LOCAL URBAN RENEWAL PLANNER,

Second Respondent.

JOHN MAYLOTT and GERALD V. CRUISE. DEPT. OF HOUSING and URBAN DEVELOPMENT.

Third Respondent.

PLEASE TAKE NOTICE that upon the annexed affirmation of ROBERT RIVERS, and upon all the pleadings and proceedings heretofore had herein, a motion will be made at Room of the United States District Court for the Eastern District of New York to be held in the United States Courthouse, 225 Cadman Plaza East, Borough of Brooklyn, State of New York, on the Gray of January, 1974 at 10.00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order granting a hearing on this matter pursuant to the order of HON. JOHN K. BARTELS, dated August 31, 1973, whereby he asked the above named petitioners to make a formal complaint to the Department

of Housing and Urban Development while holding his decision on the matter in abevance pending the outcome of the said formal complaint and for such other and further relief as to this Court may seem just and proper.

Dated Westbury NV December 18, 1973

Yours etc. .

ROBERT RIVERS
Attorner for Petitioners
Office & T.O. Address
287 Post Avenue
Westburg. NY 11590
(516) 333-3555

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TO

RESSA & NAPPI Attorneys for Second Respondent 33 Main Street Fort Washington, NY 11050

RICHARD OSTERNDORF Attorney for Pirst Respondent 220 Plandome Road Manhasset NY 11030

INITED STATE: ATTORNEY 225 Cadman Plaza East Brooklyn Hew Mork

#### UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS, ROBERT CURRY. MRS. EVELYN BROWN, THOMAS HOLMES, MRF. EPPIE JOHNSON, WILLIAM HARRIS MRS. SHARA BROWN WILLIAM DORY, MRS. ELLA HARRIS, GEORGE ROSTKY and GREAT NECK MANOR CIVIC ASSOCIATION, and all others similarly situated,

Petitioners,

#### against

Civil Act'on in. 730 110%

ROBERT C. MEADE. JAMES R. WELLS. MICHAEL J. TULLY, JR., CHOPGE C. SOOS, FELLY C. ANDREWS JOHN F. MCDONALD, ARTHUR G. BINGHAM. WILLIAM H. RYAN, JR., TOWN OF NORTH HEMPSTEAD

Pirst Pespondent.

HECTOR H. GAYLE. Executive Director BERNARD CARTLET Chairman, TOSER! CRCT DR. CURTIS KENDRICK LOCAL URBAN BUNGLAY, PLANUEP

Second Respondent

JOHN MAYLOTT and GERALD V. CRUISE, DIFT IF HOUSING and DEVELOPMENT.

Third kesmondant.

STATE OF NE / YORY) CO COUNTY OF NASSAU )

ROBERT RIVERS on attorner duly admitted to the practice of law in the State of New York and is duly admitted to the United States Court of Appeals, Second Circuit, and duly admitted to practice before the United States Supreme Court and being the attorney for the above named notitioners, hereby deposes under the penalty of perium:

That the within affirmation is submitted in support of the potitioners motion returnable on the day of January 1974, requesting a hearing in the above-entitled action on the grounds that the petitioners had failed to obtain any administrative relief regarding their complaint, ordered to be made by HON. JOHN R. BARTELS.

That this proceeding was instituted as a result of the intended construction of the Spinnev Hill Urban Renewal Project in a predominantly Black neighborhood when a survey conducted by the Town of North Hempstead indicated 70% Black occupancy in the said project.

That the patitioners in their complaint alleged that the current Spinney Hill Urban Renewal Project as presently constituted represents an expenditure of Egifful Europe for the purpose of bringing about radial concentration, contrary to the federal guidelines and that the proposed project is in direct contravention of Section 601 of the Civil Figure Act of 1964.

That this action came on Rollo Tears before Pon.

JOHN P. BARTELS at the United States District Court for the
Eastern District of New York on the day of August 31, 1973

During the hearing Judge Bartels advised four deponent Response
RIVERS to make a formal complaint to the Denartment of Pouring
and Urban Development on behalf of his client, Great Neck Manor
Civic Association, while holding his decision with regard to the
matter in abeyance bending the outcome of the complaint to PUL.

That the said complaint was transmitted to the Department of Housing and Urban Development, with a letter dated September 6, 1973, and the said complaint was dismissed by the Department of Housing and Urban Development on November 15, 1:73.

That it is, however, your deponent's considered opinion that the disposition of the Department of Housing and Urban Development, paragraph Two is.

An examination of the facts disclosed insufficient evidence to substantiate these allegations.

leaves a great deal to be desired. It was the holief of your deponent that any decision emanating from the Department

of Housing and Urban Development would contain as to its basis, supportive data from which finding of facts and conclusions based upon the rules and regulations of the Department of Housing could be made. A bare statement indicating a finding of insufficient evidence in light of the very madific allegations contained within the complaint, strikes your ferror as grossly inadequate.

that the netitioners in their complaint alleger that a reserve ents deliberately selected only one site in a predominantly black area of Manhasset when a survey call a restrict the Town indicated that the vast majority of the towards and for the new housing are Black. That it was in continually the various housing regulations and statutes which require the construction of low income housing to be selected for the construction of low income housing to be selected for all around regardless of reserve eligible amplicants of all around regardless of reserve and creek or national origin so that numbers as an apprix of a could be located outside of the areas of occasional and only on minority order.

forbids the count ruction of federally financed omble sensine is an all field neighborhool in the amignes of claim showing that no other acceptable sites are available. On the contrary there are other suitable sites which could have been utilized in the construction of the said protect but the respondents deliberates refused to recommend those sites for first of objection from the residents of those neighborhoods. In it findings the Department of Housine and Urban Development constants in the last paracraph of the memorandum.

That one or more of the situe processed outside of mess of minority concentration when found accentable, be developed along with the Spinner Hill site.

That it is the contention of the octitioners that no such alternate site has been recommended and the refer of

to the proposed site is merely an attempt to defeat Title VI of the Civil Rights Act of 1964.

That if the respondents contend and such contention is acceded to by the Department of Housing and Urban Development that the "federally mandated principle of scattered site principle" has been completed with, then of course it is incumber upon the respondents to offer documentary testimony not only as to the acquisition of the title of the site they claimed to have acquired, but also a proof that the said alternate site would be developed along with the Spinner Hill site so as to provide freedom of choice of bousing constitution for the case.

Hill Project, as resolved in the Town Board resolutions and the dated June 15, 1971.

for housing and 'ousing development to the interest of housing and 'ousing development to the interest of hood. However, they reiterate their opposition to the correct Spinner Hill Urban Renewal Project on the crosses that i presently constituted, it represents an expenditure of fucces; funds for the currose of bringing about sacial conscitution.

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THERREPORT, the netitioners respectfully mray that an order be made granting the petitioners a hearing where testimony will be taken to determine the constitutional issues involved in this matter.

Sworn to before me this 27th day of December, 1973.

המתותא האמוחה

January 7, 1974

Clerk of the Court Calendar Clerk U.S. District Court 225 Cadman Plaza East Brooklyn. New York

Re In the matter of William Jones et. al. vs. Robert C. Meade et. al. Hector Gayle et. al. and John Maylott et. al. Civil Action No. 73C 1104

Dear Sir

Pursuant to my conversation this date with Judge Bartels' secretary, Miss Davis she has informed me that the motion which was sent to your office on the 2nd day of January. 1974 will be returnable on the 25th day of January 1974.

please be kind enough to mark your calendar accordingly.

Also enclosed please find affidavit of service with regard to said motion.

Very truly yours.

Robert Rivers

RR/es

### AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK) SS

deposes and says that deponent is over the age of 18 years is not a party to the action and resides at Long Beach. New York.

That on the 2nd day of January 1974, the deponent served the within Notice of Motion upon RESSA & NAPPL 33 Main Street. Port Washington, NY. RICHARD OSTERNDORF. 220 Plandome Road. Manhasset, NY and the U.S. ATTORNEY. 225 Cadman Plaza East. Brooklyn New York the within action at the addresses designated by said attorneys by depositing same in a postpaid wrapper in an official depository of the United States Post Office in the State of New York.

Sworn to before me this 2nd day of January 1974.

M Die

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF WILLIAM JONES. CLARENCE BARIS, MARY HORBS, ROBERT CURRY. MRS. EVELYN BROWN, THOMAS HOLMTS MRT. EPPIF JOHNSON. WILLIAM HARRIS, MRS. SHARA BROWN. WILLIAM DORY. MRS. ELLA HARRIS, GEORGE ROSTKY and GREAT NECK MANOR CIVIC ASSOCIATION, and all others similarly situated,

Petitioners,

- against -

73C 11 4

ROBERT C. MEADE JAMES R. WELLS, MICHAEL J. TULLY. JR. GEORGE C. SOOS, FELIX G. ANDREWS JOHN F. MCDONALD. ARTHUR G. BINGHAM, WILLIAM H. RYAN JR. TOWN OF NORTH HEMPSTEAD.

Pirst Reanondert

HECTOR II. GAYLE Executive Director BERNARD GARTLER Chairman JOSEPH CECI, DR. CURTIS KENDRICK LOCAL URBAN RENEWAL PLANNER.

Second Respondent,

TOWN MAYLORM and CORMID V. CRUISE, ORPM. OF HOUSING and URBAN DEVELOPMENT,

Third Respondent.

----X

STATE OF NEW YORK) SC

ROBERT RIVERS, an attorney duly admitted to the practice of law in the State of New York, and is duly admitted to the United States Court of Appeals, Second Circuit, and duly admitted to practice before the United States Supreme Court and being the attorney for the above named peitioners, hereby descripts under the penalty of perjury:

 on the grounds that the petitioners had failed to obtain anvadministrative relief regarding their complaint, ordered to be made by HON. JOHN K. BARTELS.

That this proceeding was instituted as a result of the intended construction of the Spinney Hill Urban Renewal Project in a predominantly Black neighborhood when a survey conducted by the Town of North Hempstead indicated 70% Black occupancy in the said project.

That the petitioners in their complaint alleded that the current Spinney Hill Urvan Penewal Project as presently constituted represents an expenditure of Federal Funds for the purpose of bringing about racial concentration contrary to the federal guidelines and that the proposed project is in direct contravention of Section 601 of the Civil Rights Act of 1964.

That this action came on to be heard before Hon.

JOHN R. BARTELS at the United States District Court for the

Eastern District of New York on the day of August 31, 1973,

During the hearing Judge Bartels advised your deponent ROBFET

RIVETS to make a formal complaint to the Department of Housing and Urban Development on behalf of his client, Great Neck Manor Civic Association, while holding his decision with regard to the matter in abeyance pending the outcome of the complaint to HUD.

Department of Housing and Urban Development, by letter dated

September 6. 1973, and the said complaint was dismissed by the

Department of Housing and Urban Development on November 15, 1973.

That it is, however, your deponent's considered opinion that the disposition of the Department of Housing and Urban Development, paragraph Two is,

"An examination of the facts disclosed insufficient evidence to substantiate these allegations..."

leaves a great deal to be desired. It was the belief of your deponent that any decision emanating from the

Department of Housing and Urban Development would contain as to its basis, supportive data from which findings of facts and conclusions based upon the rules and regulations of the Department of Housing could be made. A bare statement indicating a finding of insufficient evidence in light of the very specific allegations contained within the complaint, strikes your deponent as grossly inadequate.

that the petitioners in their complaint alleged that the respondents deliberately selected only one site in a predominantly Black area of Manhasset when a survey taken by the Town indicated that the vast majority of the tenants applying for the new housing are Black. That it was in contravention of the various housing regulations and statutes which requires sites for the construction of low income housing to be selected from among sites which will afford an opportunity for including eligable applicants of all groups, regardless of race, color, creed or national origin so that numbers of minority groups could be located outside of the areas of concentration of their own minority group.

That title VI of the Civil Rights Act of 1964 forbit the construction of federally financed public housing in an all mack neighborhood in the absence of clear showing that no other acceptable sites are available. On the contrary there are other suitable sites which could have been utilized in the construction of the said project but the respondents deliberately refused to recommend those sites for four of objection from the residents of those neighborhoods. In its findings, the Department of Housing and Urban Development concluded in the last paragraph of the memorandum.

"That one or more of the sites proposed outside of areas of minority concentration when found acceptable, he developed along with the Spinney Hill site."

That it is the contention of the petitioners that no such alternate site has been recommenced and the reference

to the proposed site is merely an attempt to defeat Title VI of the Civil Rights Act of 1964.

That if the respondents contend and such contention is accorded to by the Department of Housing and Urban Development that the "federally mandated principle of scattered site principle" has been complied with, then of course it is incumbent upon the respondents to offer documentary testimony not only as to the acquisition of the title of the site they claimed to have acquired, but also a proof thatthe said alternate site would be developed along with the Spinney Hill site so as to provide freedome of choice of housing opportunity for the Spinney Hill Project. as resolved in the Town Board resolutions 369-1971, dated June 15, 1971.

That the petitioners again reassert their support for housing and housing development in the Spinney Hill neighborhood. However, they reiterate their opposition to the current spinney Hill Urban Renewal Project on the grounds that as presently constituted, it represents an expenditure of federal funds for the purpose of bringing about racial concentration.

That since the Department of Housing had shown its determination to condone and connive with the respondents overt breach of the Federal guidelines, and the enlightened concent of scatter site dwellings, it is the intention of the petitioners to ask for a hearing to determine the constitutionality of the construction of the Spinnev Hill project.

WHERFFORE, the petitioners respectfully pray that an order be made granting the petitioners a hearing to determine the constitutional issues involved in this matter.

Dated Westbury, NY December 27 1973

Sworn to before me this 27th day of December. 1973.

ROBERT RIVERS

## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS, ROBERT CURRY, MRS. EVELYN BROWN, THOMAS HOLMES, MRS. EPPIE JOHNSON, WILLIAM HARRIS, MRS. SHARA BROWN, WILLIAM DORY, MRS. ELLA HARRIS, GEORGE ROSTKY and GREAT NECK MANOR CIVIC ASSOCIATION, and all others similarly situated.



Petitioners,

AFFIRMATION Civil Action No. 73C 1104

-against-

ROBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., GEORGE C. SOOS, FELIX G. ANDREWS, JOHN F. MCDONALD, ARTHUR G. BINGHAM, WILLIAM !!. RYAN, JR., TOWN OF NORTH HEMPSTEAD.

First Respondent,

HECTOR H. GAYLE, Executive Director, BERNARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK, LOCAL URBAN RENEWAL PLANNER,

Second Respondent,

JOHN MAYLOTT and GERALD V. CRUISE, DEPT. OF HOUSING and URBAN DEVELOPMENT,

Third Respondent.

STATE OF NEW YORK)
) ss.:

COUNTY OF NASSAU )

RALPH A. NAPPI, attorney duly admitted to practice in the courts of the State of New York, affirms under the penalties of perjury and pursuant to Rule 2106 of the C.P.L.R. that the following facts are true:

1. That I am the attorney for the second respondent and submit this affirmation in opposition to the petitioners' motion for a hearing.

- 2. That your affirmant respectfully submits that there is pending in the above-entitled action a motion for summary judgment based upon a number of procedural and substantive grounds. That your affirmant respectfully requests that the aforesaid pending motions be ruled upon by the court on the return date of the instant motion.
- 3. That the petitioners have filed a complaint with the third respondent herein, which said complaint was not timely filed and which said complaint was dismissed by the third respondent herein.
- 4. That the petitioners herein have failed, neglected and refused to set forth any substantive reasons to uphold the allegations set forth in their complaint to the third respondent herein.
- 5. That the respondents herein have fully set forth in their prior opposing affidavits the grounds upon which the petitioners request for an injunction and other relief should be denied and your affirmant respectfully refers the court to the aforesaid opposition affidavits heretofore filed herein.

WHEREFORE, affirmant respectfully requests that the instant motion be denied and that the cross-motions for summary judgment be granted in all respects.  $\label{eq:pects}$ 

Dated: Port Washington, N.Y. January 9, 1974

Ralph A. Nappi

19

JDP:HJF:iq F.#730800

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

In the matter of the application of: William Jones, et al.,

Petitioners,

-against-

ANSWER

Robert C. Meade, et al.,

Civil Action No. 73 C 1104

Respondents.

Third respondents, John Maylott and Gerald V.

Cruise, Department of Housing and Urban Development of the
United States, in answering petitioners' verified petition
allege:

FIRST: Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraphs designated "1.", "2.", "4.", "6.", and "7." of petitioners' verified potition.

SECOND: Deny knowledge and information sufficient to form a belief as to the allegations contained in the first two sentences of paragraph designated "3." or get-itioners' verified petition and deny the allegations contained in the last sentence of said paragraph "3." and allege that the named third responden are employees of the accretary of Housing and an Development of the United States.

THIRD: Deny the allegations contained in paragraphs designated "5.", "8.", "9.", "10.", "11.", "12.", "13.", "14.", "15.", and "16." of petitioners' verified petition.

# AS AND FOR A FIRST COMPLETE AND AFFIRMATIVE DEFENSE

FOURTH: Petitioners have failed to state a claim upon which relief can be granted.

AS AND FOR A SECOND COMPLETE
AND AFFIRMATIVE DEFENSE

FIFTH: Petitioners do not have standing to maintaining this action.

AS AND FOR A THIRD COMPLETE
AND AFFIRMATIVE DEFENSE

SIXTH: Petitioners are barred by laches from maintaining this action.

AS AND FOR A FOURTH COMPLETE
AND AFFIRMATIVE DEFENSE

SEVENTH: This court is without jurisdiction over the subject matter of this action.

AS AND FOR A FIFTH COMPLETE AND AFFIRMATIVE DEFENSE

EIGHTH: . This is a suit against the United States to which the United States has not consented.

AS AND FOR A FIRST PARTIAL AFFIRMATIVE DEFENSE

NINTH: John Maylott and Gerald V. Cruise are not proper respondents and the action should be dismissed as to them and James T. Lynn, Secretary of the Department of Housing and Urban Development of the United States should be substituted as the third respondent.

WHEREFORE, Federal third respondents demand judgment dismissing the verified petition of petitioners herein against them together with the costs and disbursements of this action and for such other and further medical as 400 data court may seem just and proper.

Dated: Brooklyn, New York

January 16, 1974

EDWARD JOHN BOYD V "nited States Attorney Bustern District of New York Attorney for Third Respondents

Harold J. Friedman Assistant U.S. Attorney

TO:

Rivers & Baldwin 287 Post Avenue Westbury, New York 11590

Ressa & Nappi, Esqs. 33 Main Street Port Washington, N.Y. 11050

Richard Osterndorf, Esq. Town Hall Manhasset, N. Y. 11030 RESSA & NAPPI
AITORNEYS AT LAW
35 MAIN STREET
POPT WASHIT-GION, N.Y. 11050

AMES D. RESSA RALPH A. NAPPI

January 24, 1974

516 - 767-5800

United States District Court Eastern District of New York 225 Cadman Flaza East Brooklyn, New York ATT: William Warren

RE:

Index #73C1104

Jones, et al vs. Meade, et al

Dear Mr. Warren:

This will confirm our conversation of January 23, 1974 with reference to the above captioned proceeding.

It was agreed that the return date in this matter would be February 22, 1974 so as to permit the respondents to submit appropriate briefs for the cross motions for summary judgment. It was further agreed that provided the petitioners file their reply briefs timely, that any additional briefs from the respondents would be filed on or before February 19, 1974.

I am sending a copy of this letter to the attorneys for all parties so that there can be no misunderstanding with reference to the return date, filing of briefs, etc.

Very truly yours,

RALPH A. NAPPI

RAN:dc

cc: Mr. Richard Osterndorf Deputy Town Attorney Town Hall Plandome, Manhasset New York

> Urban Renewal Agency 80 Roslyn Road Roslyn Hts., New York

United States Attorney 225 Cadman Plaza East Brooklyn, New York ATT: Carl Friedman

Mr. Robert Rivers, Esq. 287 Post Avenue Westbury, New York 11590

## UNITED STATES DISTRICT COURT

#### FOR THE

### EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF:
WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS,
ROBERT CURRY, MRS. EVELYN BROWN,
THOMAS HOLMES, MRS. EPPIE JOHNSON,
WILLIAM HARRIS, MRS. ALBERTHA JOHNSON,
MRS. ROSE WILLIS, MRS. SHARA BROWN,
WILLIAM DORY, MRS. ELLA HARRIS, GEORGE
ROSTKY and GREAT NECK MANOR CIVIC ASSOCIATION,
and all other similarly situated,

Petitioners,

#### - against -

ROBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., GEORGE C. SOOS, FELIX G. ANDREWS, JOHN F. MCDONALD, ARTHUR G. BINGHAM, WILLIAM H. RYAN, JR., TOWN OF NORTH HEMPSTEAD,

First Respondent,

HECTOR H. GAYLE, Executive Director, BERNARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK, LOCAL URBAN RENEWAL PLANNERS,

Second Respondent,

JOHN MAYLOTT and GERALD V. CRUISE, DEPT. OF HOUSING AND URBAN DEVELOPMENT,

Third Respondent.

FIRST RESPONDENT'S MEMORANDUM OF LAW IN SUPPORT OF AFFIDAVIT IN OPPOSITION TO ORDER TO SHOW CAUSE AND CROSS MOTION FOR SUMMARY JUDGMENT

RICHARD J. OSTERNDORF
Counsel to
FRANCIS F. DORAN, Town Attorney
Town of North Hempstead
Attorney for First Respondents
220 Plandome Road
Manhasset, New York 11030

#### POINT I

# PETITION'S ACTION WAS NOT TIMELY COMMENCED

This action was commenced by service on the various respondents of a Summons dated July 24, 1973, and a Petition dated July 18, 1973. Petitioners complain of actions taken by the First and Second Respondents which occurred, respectively, on May 17, 1972 (Petition, paragraph 12) and May 10, 1972 (Petition, paragraph 4).

Although the Petition herein never specifically recites the jurisdictional basis for this action, it appears that it is based on alleged violations of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000 d et seq) ("1964 Act") and Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601-3619; § 3631) ("1968 Act").

First and Second Respondents respectfully submit that commencement of this action over fourteen months from the alleged discriminatory actions of said Respondents is impermissible regardless of which statute is relied upon as the basis for the action.

A) As to the 1964 Act:

Section 601 (42 U.S.C. § 2000 d) provides:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

The 1964 Act specifies no statute of limitations for the commencement of an action for enforcement of the quoted section. In such a case, the Courts have uniformly held that the state statute of limitation for similar actions would apply. (Hickman v. Fincher, 483 F. 2d 855 (4th Cir., 1973)

The New York Civil Practice Law and Rules ("CPLR") \$217 provides:

"... a proceeding against a body or officer must be commenced within four months . . . "

Come encement of this action for violation of the 1964

Act fourteen months after the challenged actions and determinations of First and Second Respondents fails to satisfy the New York statute of limitations. This Court should dismiss the action insofar as it purports to be based on the 1964 Act.

B) As to the Civil Rights Act of 1968:

The only reference to this Act in all of the papers heretofore submitted by Fetitioners is a mention in paragraph 10 of the Petition. After quoting all of the text of Section 601 of the 1964 Act, petitioners conclude that the project proposed by Respondents

"will impede a workable program for community improvement in conformity with the Civil Rights Act of 1964 and 1838."

No other mention of the 1968 Act appears in any papers submitted by

Petitioners or their counsel. Nowhere is there any allegation of discrimination under any specific section of said Act, other than the groundless conclusory prognostication above content.

Nevertheless, on the assumption that Petitioners sought to state a cause of action under the 1968 Act, First and Second Respondents submit that the action is untimely and should be dismissed.

Section 810 of the Act (42 U.S.C. § 3610) provides that a civil action may be brought only after a complaint is filed with the Secretary of Housing and Urban Development ("HUD"), which complaint "shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred."

Although this Court requested Petitioners to file such a complaint and HUD agreed to accept such filing, First and Second Respondents never consented thereto or waived their objections to Petitioners' action on the grounds of untimeliness. (The Court is respectfully directed to the Transcript of the Hearing held before the Court on August 31, 1973, pp. 23-26, wherein counsel for both First and Second Respondents objected to the late filing of the HUD complaint.)

Similarly, Section 812 demands that civil actions brought thereunder be "commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred."

In their Reply to the Second Respondents' Answer,

Petitioners allege that this suit was brought late in reliance on

"a verbal promise [of said Respondents] that they would be

recommending an alternate site." (par. 3) That this contention,

even if proven, is of no avail in the face of a failure to commence

an action within the statute of limitations is shown by Johnson y

Ganino, Prentice Hall, Equal Opportunity in Housing, para. 13,532,

(ND Calif., 2/4/72), wherein plaintiffs claimed:

"since they attempted informal conciliation through the Secretary of HUD before filing this suit, they should not be penalized for having filed after the 180-day period . . . "

The Court disagreed and dismissed the claim under the 1968 Act.

Petitioners are, therefore, precluded from maintaining an action under the 1968 Act, even if a liberal and imaginative reading of the papers should reveal that to be their intention.

#### POINT II

# PETITIONERS' PRAYERS FOR EQUITABLE RELIEF ARE BARRED BY LACHES

Insofar as Petitioners request equitable relief of this Court, they are barred by laches. The first four requests in the "Wherefore" clause of the Petition herein are prayers for equitable relief.

By this doctrine, a court may refuse to exercise equitable powers in favor of a petitioner whose unexcused delay, if the suit were allowed, would be prejudicial to the respondents. Holmberg v. Armbrecht, 327 U.S. 392 (1946); Long Island R.R. Co. v. The New York Central, 182 F. Supp. 100 (SD NY, 1960); James McWilliams

Blue Line Inc. v. Esso Standard Oil Co., 145 F. Supp. 392 (SD NY, 1956) In this regard, the Court should take notice of the recent action of the Department of Housing and Urban Development which found Petitioners' claims to be completely without merit. The application of this defense is within the discretion of the Court and such discretion should be exercised to avoid unfairness to the Respondents.

Gardner v. Panama R. Co., 342 U.S. 29 (1951)

The defense is effective on proof (a) of delay and (b) of prejudice to the Respondents.

Unlike an action seeking only legal relief, in an equitable action, petitioner's time to commence an action is not

measured by the statute of limitations. A court in equity should, however, look at such limitations for the light they may shed on determining whether petitioners have inexcusably slept on their rights. Holmberg v. Armbrecht, supra; Leonick v. Jones & Laughlin Steel Corp., 258 F. 2d 48 (2d Cir., 1958)

applicable to similar legal actions, the burden is on the petitioners to justify the delay and to establish that the respondents were not prejudiced thereby. Long Island R.R. Co. v. The New York Central, supra. When a legal action is barred, a person should not be permitted to avoid the effect of the limitations statute merely by bringing the suit in equity. Todd v. Russell, 104 F. 2d 169 (2d Cir., 1939), aff'd 309 U.S. 280 (1940)

In the case at bar, it is clear that Petitioners are not within the 180 day and 4 month limitations provided, respectively, in the Civil Rights Acts and the New York Procedural Laws.

Petitioners must, therefore, explain their delay.

It would be of no avail for Petitioners to allege informal negotiations with any Respondent during the 14 month period between the Respondents' determinations and commencement of this action.

The right of a party to resort to negotiation is not perpetual and does not obviate the necessity for exercising diligence in seeking redress in the courts or before administrative agencies.

Landell v. Northern

Pacific Ry. Co., 122 F. Supp. 253 (DC, 1954), aff'd 223 F. 2d 316 (D.C. Cir., 1955), cert. denied 350 U.S. 844 (1955) A person should not withhold his claims awaiting the outcome of uncertain, informal conversations with respondents, and assert his claim only when such conversations prove futile. Hunt v. Pick, 240 F. 2d 782 (10th Cir., 1957)

There is no denying that Petitioners and their counsel knew in June of 1972 that the First and Second Respondents had finally determined to go ahead with the now challenged project. Even if they had not actually known, with due diligence they could have informed themselves of the facts giving rise to a cause of action and their available judicial and administrative remedies. That they may or may not have done so is of no consequence.

Davidson v. Grady, 105 F. 2d 405 (5th Cir., 1939), rehearing denied 106 F. 2d 272 (5th Cir., 1939)

Prejudice to Respondents is clear from even a brief glance at the actions taken by them between the date of their determination and the commencement of this action.

Having approved the plan, First Respondents committed large sums of money to it as required by the matching funds provisions of the federal program. Such commitment was reflected in the tax computations for the period involved.

Second Respondents have retained a developer who has completed the plans for construction and who is actively negotiating

with the State of New York for operating funds. Substantially all the land involved has been purchased by Second Respondents and ground breaking awaits only the resolution of this action. The developer, relying on the good faith actions of the Respondents, has expended large sums of money in furtherance of the overall project.

Clearly, permitting Petitioners to maintain this action after such an inordinately long delay, in light of the progress made and moneys committed and spent, would be highly prejudicial to the Respondents and inimical to the interests of good government.

Sanctioning this action would mean that all governments must sit idly by while obstructionists publicly oppose forward looking projects and make no efforts to have their alleged rights enforced. A government serving the interests of over a quarter of a million residence cannot operate by being forced to sit on a fence for inordinately long periods of time while capricious objections are withheld from the judgment of the courts.

#### POINT III

# PETITIONERS FAIL TO SHOW STANDING EITHER INDIVIDUALLY OR AS A CLASS TO MAINTAIN THE WITHIN ACTION

In order for the Petitioners to succeed they must prove that they are an aggrieved party or parties to the extent they have been injured by the alleged discrimination. Sierra Club v. Morton,

405 U.S. 727 (1972); Association of Data Processing Service

Organizations Inc. v. Camp. 397 U.S. 150 (1970); Barlow v. Collins,

397 U.S. 159 (1970) In Flast v. Cohen, 392 U.S. 83, 101 (1968),
the United States Supreme Court very cogently defined the question of standing when it stated:

"The question of standing is related only to whether the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution."

The definition of standing was further defined in <u>Cornelius v. City of</u>
Parma, P-H, Equal Opportunity in Housing, para. 13,621, at p. 14,046
(DC ND Ohio, 1973), wherein the court stated:

"The test that seems to have evolved to determine standing questions appears to require at a minimum that a party seeking judicial review or redress for a constitutional or statutory violation make a showing of 'injury in fact'."

In the instant case, the Petitioners have not shown that they are the objective of the alleged discriminatory housing practices and they have not shown, to any significant extent, that they indeed have a personal stake in the outcome of this controversy.

In his affirmation in opposition dated August 13, 1973, Petitioners' attorney states:

"... petitioners in the within proceeding are owners of real properties within the neighborhood of Spinney Hill... The petitioners have alleged in their petition that the project would not only harm the one-family character of the neighborhood but also bring about an unconscionable burden upon the already over-taxed Manhasset School District, thereby causing an additional tax burden for the petitioners." (Emphasis Supplied)

The same language is utilized is utilized in the Petition, paragraph 15 thereof, dated July 18, 1973.

It is submitted that the Petitioners do not live in the project area and in fact live in a desirable one-family housing area only in the proximity of the project area. It is further submitted that the Petitioners could not qualify nor would they desire to live in the said project area. Also, all of the Petitioners do not reside in the school district which encompasses the project area. Petitioners have not shown that they are indeed aggrieved parties nor do they establish their "injury in fact". At most, they are concerned about maintaining their own area as a "one-family neighborhood" and by inference they seem to resent the proximity of the project to their homes. To this effect see Trafficonte v. Metropolitan Life Insurance Co., 446 F. 2d 1158 (9th Cir., 1971), rev'd 409 U.S. 205 Thus the Petitioners are in a position similar to several of (1972).the petitioners in the Cornelius case where the court, supra at page 14,048, states:

"their claim is based at most, on allegations of injury arising from secondary effects of such discrimination."

While Respondents will hereafter contest the validity of the class action, we submit that, even if the class is certified, neither the Great Neck Manor Civic Association nor the individual Petitioners have in any respect established their standing in the instant case. We again refer the Court to Cornelius v. City of Parma, supra, at page 14, 047, wherein the Court succinctly stated:

"However, while in the above mentioned cases the organizations involved either had themselves substantial tangible interests in the litigation or demonstrated a clear, active and intimate involvement with the actual issues there in question, such is not the case here." (Emphasis Supplied)

Since the Petitioners have not established their standing in the instant case, then the Petition must be dismissed.

### POINT IV

# PETITIONERS CANNOT PROPERLY MAINTAIN A CLASS ACTION

Petitioners' cause of action is of the type generally referred to as a class action because an association and a few of its members fail to litigate on behalf of the entire membership of the association.

The general rule is that a representative in a class action must be a member of the class which he purportedly represents.

Bailey v. Patterson, 369 U.S. 31 (1962).

Because the association is not a member of the class of people allegedly aggrieved, it has no right to bring an action on behalf of these people, regardless of the fact that they are members of the association itself.

It is settled that an association cannot properly bring an action to enforce the rights of or to recover benefits for the individual members of that association. Alabama Independent Service Station Association v. Shell Petroleum Corp., 28 F. Supp. 386 (ND Ala., 1939); Rock Drilling Local Union No. 17 v. Mason and Hanger Co., 217 F. 2d 687 (2d Cir., 1954), cert. denied 349 U.S. 915 (1955)

Furthermore, in order to maintain a class action, there must be an injury to the organization distinct from the injury to the membership. Griswold v. Connecticut, 381 U.S. 479 (1965)

On these counts, it is clear that the Great Neck Manor Civic Association cannot represent these people in this class action.

Finally, no one can institute any class action unless he has standing. The individual Petitioners have no standing and not one of them has the right to set himself up as a representative of the group in this action.

On these counts, it is clear that the Great Neck Manor
Civic Association cannot represent any class in the action. Nor
have the individual plaintiffs, even if they have standing to maintain
this action on their own behalf, demonstrated that they are members
of a defined class, the interests of which they can adequately
represent. First and Second Respondents, therefore, submit that
certification of any class is unwarranted and the Court should decline
to do so.

# CONCLUSION

WHEREFORE, in view of the foregoing, the Order to Show Cause and the relief requested therein should be denied and the Summons and Complaint served herein dismissed.

RICHARD J. OSTERNDORF

Counsel to

FRANCIS F. DORAN, Town Attorney

Town of North Hempstead Attorney for First Respondents

### UNITED STATES DISTRICT COURT

#### FOR THE

### EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF:
WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS,
ROBERT CURRY, MRS. EVELYN BROWN,
THOMAS HOLMES, MRS. EPPIE JOHNSON,
WILLIAM HARRIS, MRS. ALBERTHA JOHNSON,
MRS. ROSE WILLIS, MRS. SHARA BROWN,
WILLIAM DORY, MRS. ELLA HARRIS, GEORGE
ROSTKY and GREAT NECK MANOR CIVIC ASSOCIATION,
and all other similarly situated,

Petitioners,

#### - against -

ROBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., GEORGE C. SOOS, FELIX G. ANDREWS, JOHN F. MCDONALD, ARTHUR G. BINGHAM, WILLIAM H. RYAN, JR., TOWN OF NORTH HEMPSTEAD,

First Respondent,

HECTOR H. GAYLE, Executive Director, BERNARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK, LOCAL URBAN RENEWAL PLANNERS,

Second Respondent,

JOHN MAYLOTT and GERALD V. CRUISE, DEPT. OF HOUSING AND URBAN DEVELOPMENT,

Third Respondent.

SECOND RESPONDENT'S MEMORANDUM OF LAW IN SUPPORT OF AFFIDAVIT IN OPPOSITION TO ORDER TO SHOW CAUSE AND CROSS MOTION FOR SUMMARY JUDGMENT

RESSA & NAPPI Attorneys for Second Respondents 33 Main Street Port Washington, New York 11050

#### POINT I

# PETITION'S ACTION WAS NOT TIMELY COMMENCED

This action was commenced by service on the various respondents of a Summons dated July 24, 1973, and a Petition dated July 18, 1973. Petitioners complain of actions taken by the First and Second Respondents which occurred, respectively, on May 17, 1972 (Petition, paragraph 12) and May 10, 1972 (Petition, paragraph 4).

Although the Petition herein never specifically recites the jurisdictional basis for this action, it appears that it is based on alleged violations of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000 d et seq) ("1964 Act") and Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601-3619; § 3631) ("1968 Act").

First and Second Respondents respectfully submit that commencement of this action over fourteen months from the alleged discriminatory actions of said Respondents is impermissible regardless of which statute is relied upon as the basis for the action.

A) As to the 1964 Act:

Section 601 (42 U.S.C. § 2000 d) provides:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

The 1964 Act specifies no statute of limitations for the commencement of an action for enforcement of the quoted section. In such a case, the Courts have uniformly held that the state statute of limitation for similar actions would apply. (Hickman v. Fincher, 483 F. 2d 855 (4th Cir., 1973)

The New York Civil Practice Law and Rules ("CPLR") \$217 provides:

"... a proceeding against a body or officer must be commenced within four months . . . "

Commencement of this action for violation of the 1964

Act fourteen months after the challenged actions and determinations
of First and Second Respondents fails to satisfy the New York

statute of limitations. This Court should dismiss the action
insofar as it purports to be based on the 1964 Act.

B) As to the Civil Rights Act of 1968:

The only reference to this Act in all of the papers heretofore submitted by Petitioners is a mention in paragraph 10 of the
Petition. After quoting all of the text of Section 601 of the 1964
Act, petitioners conclude that the project proposed by Respondents

"will impede a workable program for community improvement in conformity with the Civil Rights Act of 1964 and 1968."

No other mention of the 1968 Act appears in any papers submitted by

Petitioners or their counsel. Nowhere is there any allegation of discrimination under any specific section of said Act, other than the groundless conclusory prognostication above quoted.

Nevertheless, on the assumption that Petitioners sought to state a cause of action under the 1968 Act, First and Second Respondents submit that the action is untimely and should be dismissed.

Section 810 of the Act (42 U.S.C. § 3610) provides that a civil action may be brought only after a complaint is filed with the Secretary of Housing and Urban Development ("HUD"), which complaint "shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred."

Although this Court requested Petitioners to file such a complaint and HUD agreed to accept such filing, First and Second Respondents never consented thereto or waived their objections to Petitioners' action on the grounds of untimeliness. (The Court is respectfully directed to the Transcript of the Hearing held before the Court on August 31, 1973, pp. 23-26, wherein counsel for both First and Second Respondents objected to the late filing of the HUD complaint.)

Similarly, Section 812 demands that civil actions brought thereunder be "commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred."

In their Reply to the Second Respondents' Answer,

Petitioners allege that this suit was brought late in reliance on

"a verbal promise [of said Respondents] that they would be

recommending an alternate site." (par. 3) That this contention,

even if proven, is of no avail in the face of a failure to commence

an action within the statute of limitations is shown by Johnson v.

Ganino, Prentice Hall, Equal Opportunity in Housing, para. 13,532,

(ND Calif., 2/4/72), wherein plaintiffs claimed:

"since they attempted informal conciliation through the Secretary of HUD before filing this suit, they should not be penalized for having filed after the 180-day period . . . "

The Court disagreed and dismissed the claim under the 1968 Act.

Petitioners are, therefore, precluded from maintaining an action under the 1968 Act, even if a liberal and imaginative reading of the papers should reveal that to be their intention.

#### POINT II

# PETITIONERS' PRAYERS FOR EQUITABLE RELIEF ARE BARRED BY LACHES

Insofar as Petitioners request equitable relief of this Court, they are barred by laches. The first four requests in the "Wherefore" clause of the Petition herein are prayers for equitable relief.

By this doctrine, a court may refuse to exercise equitable powers in favor of a petitioner whose unexcused delay, if the suit were allowed, would be prejudicial to the respondents. Holmberg v. Armbrecht, 327 U.S. 392 (1946); Long Island R.R. Co. v. The New York Central, 182 F. Supp. 160 (SD NY, 1960); James McWilliams Blue Line Inc. v. Esso Standard Oil Co., 145 F. Supp. 392 (SD NY, In this regard, the Court should take notice of the recent 1956) action of the Department of Housing and Urban Development which found Petitioners' claims to be completely without merit. The application of this defense is within the discretion of the Court and such discretion should be exercised to avoid unfairness to the Respondents.

Gardner v. Panama R. Co., 342 U.S. 29 (1951)

The defense is effective on proof (a) of delay and (b) of prejudice to the Respondents.

Unlike an action seeking only legal relief, in an equitable action, petitioner's time to commence an action is not measured by the statute of limitations. A court in equity should, however, look at such limitations for the light they may shed on determining whether petitioners have inexcusably slept on their rights. Holmberg v. Armbrecht, supra; Leonick v. Jones & Laughlin Steel Corp., 258 F. 2d 48 (2d Cir., 1958)

If an action is not within the statute of limitations applicable to similar legal actions, the burden is on the petitioners to justify the delay and to establish that the respondents were not prejudiced thereby. Long Island R.R. Co. v. The New York Central, supra. When a legal action is barred, a person should not be permitted to avoid the effect of the limitations statute merely by bringing the suit in equity. Todd v. Russell, 104 F. 2d 169 (2d Cir., 1939), aff'd 309 U.S. 280 (1940)

In the case at bar, it is clear that Petitioners are not within the 180 day and 4 month limitations produced. respectively, in the Civil Rights Acts and the New York Procedural Laws.

Petitioners must, therefore, explain their delay.

It would be of no avail for Petitioners to allege informal negotiations with any Respondent during the 14 month period between the Respondents' determinations and commencement of this action.

The right of a party to resort to negotiation is not perpetual and does not obviate the necessity for exercising diligence in seeking redress in the courts or before administrative agencies.

Landell v. Northern

Pacific Ry. Co., 122 F. Supp. 253 (DC, 1954), aff'd 223 F. 2d 316 (D.C. Cir., 1955), cert. denied 350 U.S. 844 (1955) A person should not withhold his claims awaiting the outcome of uncertain, informal conversations with respondents, and assert his claim only when such conversations prove futile. Hunt v. Pick, 240 F. 2d 782 (10th Cir., 1957)

There is no denying that Petitioners and their counsel knew in June of 1972 that the First and Second Respondents had finally determined to go ahead with the now challenged project. Even if they had not actually known, with due diligence they could have informed themselves of the facts giving rise to a cause of action and their available judicial and administrative remedies. That they may or may not have done so is of no consequence.

Davidson v. Grady, 105 F. 2d 405 (5th Cir., 1939), rehearing denied 106 F. 2d 272 (5th Cir., 1939)

Prejudice to Respondents is clear from even a brief glance at the actions taken by them between the date of their determination and the commencement of this action.

Having approved the plan, First Respondents committed large sums of money to it as required by the matching funds provisions of the federal program. Such commitment was reflected in the tax computations for the period involved.

Second Respondents have retained a developer who has completed the plans for construction and who is actively negotiating

with the State of New York for operating funds. Substantially all the land involved has been purchased by Second Respondents and ground breaking awaits only the resolution of this action. The developer, relying on the good faith actions of the Respondents, has expended large sums of money in furtherance of the overall project.

Clearly, permitting Petitioners to maintain this action after such an inordinately long delay, in light of the progress made and moneys committed and spent, would be highly prejudicial to the Respondents and inimical to the interests of good government.

Sanctioning this action would mean that all governments must sit idly by while obstructionists publicly oppose forward looking projects and make no efforts to have their alleged rights enforced. A government serving the interests of over a quarter of a million residents cannot operate by being forced to sit on a fence for inordinately long periods of time while capricious objections are withheld from the judgment of the courts.

#### POINT III

PETITIONERS FAIL TO SHOW STANDING EITHER INDIVIDUALLY OR AS A CLASS TO MAINTAIN THE WITHIN ACTION

In order for the Petitioners to succeed they must prove that they are an aggrieved party or parties to the extent they have been injured by the alleged discrimination. Sierra Club v. Morton,

405 U.S. 727 (1972); Association of Data Processing Service

Organizations Inc. v. Camp, 397 U.S. 150 (1970); Barlow v. Collins,

397 U.S. 159 (1970) In Flast v. Cohen, 392 U.S. 83, 101 (1968),
the United States Supreme Court very cogently defined the question of standing when it stated:

"The question of standing is related only to whether the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution."

The definition of standing was further defined in <u>Cornelius v. City of</u>
Parma, P-H, Equal Opportunity in Housing, para. 13,621, at p. 14,046
(DC ND Ohio, 1973), wherein the court stated:

"The test that seems to have evolved to determine standing questions appears to require at a minimum that a party seeking judicial review or redress for a constitutional or statutory violation make a showing of 'injury in fact'."

In the instant case, the Petitioners have not shown that they are the objective of the alleged discriminatory housing practices and they have not shown, to any significant extent, that they indeed have a personal stake in the outcome of this controversy.

In his affirmation in opposition dated August 13, 1973, Petitioners' attorney states:

"... petitioners in the within proceeding are owners of real properties within the neighborhood of Spinney Hill.... The petitioners have alleged in their petition that the project would not only harm the one-family character of the neighborhood but also bring about an unconscionable burden upon the already over-taxed Manhasset School District, thereby causing an additional tax burden for the petitioners." (Emphasis Supplied)

The same language is utilized is utilized in the Petition, paragraph 15 thereof, dated July 18, 1973.

It is submitted that the Petitioners do not live in the project area and in fact live in a desirable one-family housing area only in the proximity of the project area. It is further submitted that the Petitioners could not qualify nor would they desire to live in the said project area. Also, all of the Petitioners do not reside in the school district which encompasses the project area. Thus, the Petitioners have not shown that they are indeed aggrieved parties nor do they establish their "injury in fact". At most, they are concerned about maintaining their own area as a "one-family neighborhood" and by inference they seem to resent the proximity of the project to their homes. To this effect see Trafficonte v. Metropolitan Life Insurance Co., 446 F. 2d 1158 (9th Cir., 1971), rev'd 409 U.S. 205 • (1972). Thus the Petitioners are in a position similar to several of the petitioners in the Cornelius case where the court, supra at page 14,048, states:

"their claim is based at most, on allegations of injury arising from secondary effects of such discrimination."

While Respondents will hereafter contest the validity of the class action, we submit that, even if the class is certified, neither the Great Neck Manor Civic Association nor the individual Petitioners have in any respect established their standing in the instant case. We again refer the Court to Cornelius v. City of Parma, supra, at page 14, 047, wherein the Court succinctly stated:

"However, while in the above mentioned cases the organizations involved either had themselves substantial tangible interests in the litigation or demonstrated a clear, active and intimate involvement with the actual issues there in question, such is not the case here." (Emphasis Supplied)

Since the Petitioners have not established their standing in the instant case, then the Petition must be dismissed.

#### POINT IV

# PETITIONERS CANNOT PROPERLY MAINTAIN A CLASS ACTION

Petitioners' cause of action is of the type generally referred to as a class action because an association and a few of its members fail to litigate on behalf of the entire membership of the association.

The general rule is that a representative in a class action must be a member of the class which he purportedly represents.

Bailey v. Patterson, 369 U.S. 31 (1962).

Because the association is not a member of the class of people allegedly aggrieved, it has no right to bring an action on behalf of these people, regardless of the fact that they are members of the association itself.

It is settled that an association cannot properly bring an action to enforce the rights of or to recover benefits for the individual members of that association. Alabama Independent Service Station Association v. Shell Petroleum Corp., 28 F. Supp. 386 (ND Ala., 1939); Rock Drilling Local Union No. 17 v. Mason and Hanger Co., 217 F. 2d 687 (2d Cir., 1954), cert. denied 349 U.S. 915 (1955)

Furthermore, in order to maintain a class action, there must be an injury to the organization distinct from the injury to the member• ship. Griswold v. Connecticut, 381 U.S. 479 (1965)

On these counts, it is clear that the Great Neck Manor Civic Association cannot represent these people in this class action.

Finally, no one can institute any class action unless he has standing. The individual Petitioners have no standing and not one of them has the right to set himself up as a representative of the group in this action.

On these counts, it is clear that the Great Neck Manor
Civic Association cannot represent any class in the action. Nor
have the individual plaintiffs, even if they have standing to maintain
this action on their own behalf, demonstrated that they are members
of a defined class, the interests of which they can adequately
represent. First and Second Respondents, therefore, submit that
certification of any class is unwarranted and the Court should decline
to do so.

### CONCLUSION

WHEREFORE, in view of the foregoing, the Order to Show Cause and the relief requested therein should be denied and the Summons and Complaint served herein dismissed.

RESSA & NAPPI

Attorneys for Second Respondents

### UNITED STATES DISTRICT COURT

#### FOR THE



EASTERN DISTRICT OF NEW YORK

RIVER

IN THE MATTER OF THE APPLICATION OF:
WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS,
RCBERT CURRY, MRS. EVELYN BROWN,
THOMAS HOLMES, MRS. EPPIE JOHNSON
WILLIAM HARRIS, MRS. ALBERTHA JOHNSON,
MRS. ROSE WILLIS, MRS. SHARA BROWN,
WILLIAM DORY, MRS. ELLA HARRIS, GEORGE
ROSTKY and GREAT NECK MANOR CIVIC ASSOCIATION,
and all other similarly situated,

Petitioners,

Civil

Action No. 73C 1104

-against -

ROBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., GEORGE C. SOOS, FELIX G. ANDREWS, JOHN F. MCDONALD, ARTHUR G. BINGHAM, WILLIAM H. RYAN, JR., TOWN OF NORTH HEMPSTEAD,

AFFIDAVIT

First Respondent,

HECTOR H. GAYLE, Executive Director, BERNARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK, LOCAL URBAN RENEWAL PLANNERS,

Second Respondent,

JOHN MAYLOTT and GERALD V. CRUISE, DEPT. OF HOUSING AND URBAN DEVELOPMENT,

Third Respondent.

STATE OF NEW YORK ) : SS.:
COUNTY OF NASSAU )

RICHARD J. OSTERNDORF, being duly sworn, deposes

and says:

- 1. I am counsel and attorney for the First Respondents in the within matter and am familiar with the facts and circumstances herein.
- 2. I make this affidavit in opposition to Petitioners' motion for a hearing herein and in support of Respondents' motion for summary judgment.

- 3. After the Town Board of North Hemps ead approved the Spinney Hill project in June, 1972, the Town closed off Cherry Place and Brook Place and made the entire lengths of both streets available to the project. For fourteen months the public was prevented from using these streets.
- 4. This project was approved on proof from Second Respondents herein that the Spinney Hill area is indeed a "blighted area." The project was intended to improve the living conditions of those who live and will live in that area and to upgrade the commercial opportunities for businessmen. In short, there was no question but the project would serve all aspects of public interest and was an immanently proper exercise of the Town's police power to control the health, safety and well-being of Town residents.
- and inexplicably delayed for fourteen months belies any claim that

  Petitioners faced serious and personal injury because of the Spinney Hill

  project. The public good mandated this project; public approval advanced
  it and the public interest demands that it go forward as quickly as possible.

  If the Petitioners are permitted to delay this project on grounds repeatedly
  rejected by HUD, the Town Board, the Town Planning Board, the State
  and the community, the Town could never begin a project knowing that all
  objectors have been heard and the time to object has passed. Never again
  will funds be spent, land dedicated or contracts signed and the real loser,
  as so often happens, will be the commonweal.

WHEREFORE, affiant respectfully requests that this

Court grant Respondents' motion for summary judgment and dismiss the

Petition herein.

Righard J. Osterndorf

Sworn to before me this

day of February, 1974.

JOSEPH A. GUARINO Notary Public, State of New York 10, 4501292 Outsified in Nassau County Contained 11, mes Nurch 30, 1975

#### UNITED STATES DISTRICT COURT

#### FOR THE

#### EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF:
QILLIAM JONES, CLARENCE BRRIS, MARY HOBBS,
ROBERT CURRY, MRS. EVELYN BROWN,
THOMAS HOLMES, MRS. EPPIE JOHNSON,
WILLIAM HARRIS, MRS. ALBERTHA JOHNSON,
MRS. ROSE WILLIS, MRS. SHARA BROWN,
WILLIAM DORY, MRS. ELLA HARRIS, GEORGE
ROSTKY and GREAT NECK MANOR CIVIC ASSOCIATION,
and all other similarly situated,

RECEIVED 1974

RIVERS

Petitioners,

- against -

Civil Action No. 73C 1104

ROBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., GEORGE C. SOOS, FELIX G. ANDREWS, JOHN F. MCDONALD, ARTHUR G. BINGHAM, WILLIAM H. RYAN, JR., TOWN OF NORTH HEMPSTEAD.

AFFIDAVIT

First Respondent,

HECTOR H. GAYLE, Executive Director, BERNARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK, LOCAL URBAN RENEWAL PLANNERS,

SS.:

Second Respondent,

JOHN MAYLOTT and GERALD V. CRUISE, DEPT. OF HOUSING AND URBAN DEVELOPMENT,

Third Respondent.

STATE OF NEW YORK )
:
COUNTY OF NASSAU )

MICHAEL S. PUNTILLO, being duly sworn, deposes

and says:

1. I am the President of Jobco Incorporated, a domestic corporation engaged in the business of providing materials and service as developers, contractors and engineers, with offices located at 277 Northern Boulevard, Great Neck, New York ("Jobco"). I am fully familiar with the facts and circumstances set forth herein.

- 2. I am submitting this affidavit at the request of First and Second Respondents herein to specify the items of labor and expense undertaken by Jobco in the period of approximately 14 months between the final determinations of said Respondents and the commencement of this lawsuit, all in respect of the development project commonly known as the "Spinney Hill" project.
- 3. In late 1972 or early 1973, the Urban Renewal Agency,
  Second Respondent herein ("Agency"), solicited proposals from interested
  developers for the spinney Hill project.
- 4. Jobco's proposal was received by the Agency on or about February 23, 1973, and the Agency designated Jobco as the developer for said project on May 23, 1973.
- 5. Immediately after designation as developer, Jobco began processing with the New York State Division of Housing and Urban Development ("State Division") to approve the project for subsidies under the Mitchell-Lama Program. Said processing involved submission of extensive plans and presentations on the project and after a comprehensive review of the project, said State Division completely approved thereof and deemed it fully qualified under the Mitchell-Lama Program. The only obstruction to consummation of the arrangements with the State Division flows from the delay caused by this lawsuit.
- 6. In addition to the cost and labor expended in preparing the original submission to Planners and in processing with the State Division,

  Jobco prepared architectural and engineering plans, conducted surveys, soil analyses, market feasibility and analysis studies, and cost estimates. Fees were paid or expenses accrued in respect of real estate brokers, management

consultants and attorneys and expenses relating to staff overhead were incurred.

- 7. In consequence of these activities, all of which were performed in furtherance of the Spinney Hill project and all of which were performed in the 14 month period before Petitioners commenced this action, Jobco has spent approximately \$81,000. All of said sums will be lost if the project is not undertaken.
- 8. Of equal significance is the historical increase in construction costs over time. In 1973, construction costs increased 19%. The original plan was to undertake this project in conjunction with other projects. Contemporaneous construction would have permitted significant savings from bulk purchases of materials. That opportunity has been lost. Similarly, the cost of labor and materials has increased and inflation has further raised prices. In consequence of all this, I estimate that approximately \$750,000 will have to be added to the \$5,000,000 price originally set, and further delay will raise the price approximately 1% per month.
- 9. Had this action been commenced immediately after the determinations of First and Second Respondents in June and May of 1972, substantially all of the above specified expenditures would have been avoided prior to a judicial determination of the objections alleged by Petitioners. As a direct consequence of the unconscionable 14 month delay by Petitioners, however, Jobco is out of pocket over \$81,000 and faces the prospect of seeking to recover those expenses from the Agency rather than have them contribute toward the completion of a project found

to be useful and desirable by every municipal, governmental and professional agency which has reviewed it.

Sworn to before me this

15 th day of February, 1974.

JOSEPH A GUARINO
Notary Public, State of New York
No. 4501292
Qualified in insufau County
Commission Expires March 30, 1975

#### UNITED STATES DISTRICT COURT

#### FOR THE

#### EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF:
WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS,
ROBERT CURRY, MRS. EVELYN BROWN,
THOMAS HOLMES, MRS. EPPIE JOHNSON,
WILLIAM HARRIS, MRS. ALBERTHA JOHNSON,
MRS. ROSE WILLIS, MRS. SHARA BROWN.
WILLIAM DORY, MRS. ELLA HARRIS, GEORGE
ROSTKY and GREAT NECK MANOR CIVIC ASSOCIATION,
and all other similarly situated,

Civil Action No. 73C 1104

Petitioners.

- against -

AFFIDAVIT

ROBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., GEORGE C. SOOS, FELIX G. ANDREWS, JOHN F. MCDONALD, ARTHUR G. BINGHAM, WILLIAM H. RYAN, JR., TOWN OF NORTH HEMPSTEAD,

First Respondent,

HECTOR H. GAYLE, Executive Director, BERNARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK, LOCAL URBAN RENEWAL PLANNERS.

Second Respondent.

JOHN MAYLOTT and GERALD V. CRUISE, DEPT. OF HOUSING AND URBAN DEVELOPMENT,

Third Respondent.

STATE OF NEW YORK )

COUNTY OF NASSAU )

HECTOR H. GAYLE, being duly sworn, deposes and

says:

1. I am the Executive Director, Town of North

Hempstead, Urban Renewal Agency, Second Respondent herein ("Agency"), and I am familiar with the facts and circumstances set forth in this affidavit.

- 2. I submit this affidavit in support of Respondents' motion for summary judgment on the ground that Petitioners' delay of 14 months in bringing this action has caused great prejudice to Second Respondent.
- 3. After the Town Board of the Town of North Hempstead approved the Spinney Hill project, the Agency retained Jobco Incorporated as developer for the project. Submitted herewith is the affidavit of Michael Puntillo. It shows that in the period of approximately 14 months during which Petitioners delayed the commencement of this action, Jobco spent approximately \$81,000 in furtherance of the project. If this action is permitted by the Court, that sum will be lost or the Agency may be required to reimburse the developer without the financial aid of the U.S. Department of Housing and Urban Development ("HUD").
- 4. On or about June 16, 1972, the Spinney Hill Neighborhood Development Plan ("NDP") was prepared by the Agency staff and submitted to HUD. On or about September 1, 1972, HUD approved the NDP for the year beginning July 1, 1972 and ending June 30, 1973. HUD allocated \$1,400,000 as a loan and \$1,300,000 as a capital grant to aid in financing the program. The agreement relating to such funding was executed on September 28, 1972.
- 5. On November 14, 1972, the Agency floated a \$4,330,000 bond transaction. The bid was awarded to The Chase Manhattan Bank (\$2,165,000) and Security National Bank (\$2,165,000) at an interest rate of 2.97% per annum. On December 12, 1972, the Agency received credit for the bonds in the amount of \$4,330,000. Interest has been paid thereon since that date.

6. On November 27, 1972, the Spinney Hill

Neighborhood Program office, having been equipped and staffed, was opened at 917 Northern Boulevard, Great Neck, and formal dedication took

7. On January 17, 1973, the Agency held a

community meeting to foster citizen involvement in the planning, development and execution of the program. Community response was enthusiastic and a Project Area Committee was formed.

8. Also in January of 1973, the Agency prepared and submitted to the New York State Division of Housing and Community Renewal an application for State Financial Assistance in an amount not to exceed \$335,000. Said application was subsequently revised and resubmitted on February 27, 1973.

9. At approximately this time, Jobco was designated as developer and joint conferences with the developer and the Agency began in earnest.

10. On April 30, 1973, an application for the aecond year funding of the project was prepared and submitted to HUD. Supplementary data was prepared and submitted on July 16, 1973. (Said approval was granted on or about September 24, 1973 and HUD allocated an additional \$1,612,643 as a loan and \$1,175,000 as a grant.)

11. On July 16, 1973, the Agency accepted bids for the Demolition Contract in connection with the project and awarded said contract to Robert Ruggiero for \$12,940.

12. All throughout this 14 month period, the Agency was executing contracts to purchase land and did in fact take title to all the land involved in the project in so far as it related to housing.

13. As a result of the foregoing activities, undertaken in furtherance of the project, and all undertaken before Petitioners so much as obtained a Summons, the Agency has accrued or disbursed expenditures as follows:

a.	Acquisition of property	\$825,000.00
b.	Legal expenses	250.00
c.	Surveys and Planning	24,556.00
d.	Miscellaneous Acquisition Expenses	5,200.00
e.	Interest on bonds	41,580.00
f.	Project Inspection	13,303.00
g.	Administrative Costs (Salaries, etc.)	57,378.00
h.	Income from investments	(_34,018.00)
	Total:	\$882,378.00

14. These are funds which will be lost forever if this project is halted.

reviewed this project, Petitioners alone objected. They have alleged a genuine interest in the project and serious injury to them if the project is continued. The Agency throughout this period was visibly and actively engaged in advancing this project and these activities were well known to all who had the interest allegedly had by Petitioners. Let only 14 months and almost a million dollars later do they go to this Court to seek relief. If this action is not dismissed, that time, those energies and that money

will be wasted and a project which was approved by all levels of government and enthusiastically received by the community will be threatened.

WHEREFORE, affiant respectfully requests that this Court find Petitioners guilty of laches and dismiss the Petition herein.

Sworn to before me this

154

day of February, 1974.

JOSEPH A. GUARTNO Notary Public, State of New York No. 4501292 Qualified in Nasseu County Commission Expires March 3 0 (975

Page 100 Page 100 Page 1000

IN THE MATTER OF THE APPLICATION OF: WILLIAM JONES, CLARENCE ERRIS, MARY HOBBS, ROBERT CURRY, MES. FVELYR BROWN, THOMAS HOLITES, IRS. EPPIE JOHNSON, WILLIAM MATRIS, MRS. ALGERTHA JOHNSON, IBRS. ROSE WILLIS, MRS. SHARA RECARD, WILLIAM DORY, MRS. ILLIA HARRIS, GFORGE MOSTRY and GREAT NECK MANON CIVIC ASSOCIATION, and all other similarly situated.

Petitioners,

-against-

No. 73C 1164

ROBERT C. MEADE, JARES R. WELLS, MICHAEL
J. TULLY, JR., CEORGE C. SOOS, FELLE G. ANDREWS,
JOHN F. MCDCHALD, ASTRUE G. BINCHAM, UTILLIAM
H. RYAH, JR., TOWN OF NORTH HEMPSTEAD.

lirst Mespondents,

HECTOR H. GAYLE, Executive Director, BERNARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KERDRICK, LOCAL URBAN REMINAL PLANNERS,

Second Respondent,

JOHN MAYLUTT and GENALD V. CRUISE, DEPT OF HOUSING AND UNLAW DEVY LOPIENT.

Third Respondents,

PETITIONERS' MEMORANDUM OF LAW
IN OPPOSITION TO RESPONDENTS' CROSS MOTION FOR
SUMMARY JUDGENT AND IN SUPPORT OF PETITIONERS'
ORDER TO SHOW CAUSE

TO: BICHARD OSTIBUDORF 220 Plandome Boad Hanhasset, NY, 11030 Town Attorney, Atty For First Respondents

> RESNA & BAPPI Attys for Second Respondents 33 Main Street Port Westington, NY, 11050

U.S. ATTORNEY Herold Friedmen Atty for Third Respondents 225 Cedem Pl E., Brooklyn, N.Y.

Attorney for Petitioners
Office & P.O. Address
287 Post Avenue
Westbury, New York 11390
(516) 333-3555

#### POINT ONE

## PITITIONERS ACTION WAS TIMELY COMMENCED

It is contended by the Respondents that this action was not timely commenced and therefore should be dismissed. It must be pointed out from the onset that this action is based on a Federally created right for which the sole remedy is equity and that statutes of limitation barring actions at law are inapplicable, for the traditional equitable doctrine of laches control instead. Thus it was stated by JUSTICE FRANKFURTER in HOLMBERG V. ARMBRECHT. 327 U.S. 396:

Traditionally and for good reasons, statutes of limitation are not controlling measures of equitable relief. Such statutes have been drawn upon by equity solely for the light they may shed in determining that which is decisive for the chancellors intervention, nearly whether the plaintiff has inexcusably slept on his rights so as to make a decree against defendant unfair."

Essentially, it must be observed that the question as to whether laches har an action in a given case depends

upon the circumstances of that case and is a question primarily addressed to the discretion of the trial court. GARDNER V. PANAMA R. CO., 342 U.S. 29, 30. Besides, where there has been no imesousable delay in seeking a remedy and where no prejudice to the respondents has ensued from more passage of time, there should be no bar to the relief. The equitable doctrine of laches is primarily designed to asoure fairness to detendants. Such doctrine promote Justice by preventing surmises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded and witnesses have disappeared. The doctrine of laches, declared to protect defendants, is frequently out-weighed; lowcour, where the interest of Justice requires vinducation or Plaintilf's right. In the instant case, it would be very addictions for the Respondents to assert that retitioners had inexcusably slept on their rights. The Petitioners, ever since the project was proposed on May 10, 1972, endeavored to bring to the attention of the First and Second Re-

apondents their duty to recommend an alternate site and the legal consequences of colonizing Black people contrary to the Civil Rights Act of 1964 and 1968. It would be pretty naive for the Respondents to suggest that Petitioners ought to have commenced this action inmediately when the project was proposed. The Second Respondents had ample time to recommend an alternate site and they gave a verbal promise of their intention to recommend an alternate site. There was no evidence to suggest that they would not abide by their promise. Besides, a mere proposal to construct a project itself is never a breach either of the Civil Rights Act or the Housing regulation. It is only when this proposal is coupled with other factors such as probable occupants of the said project and Respondents inability to recommend an alternate site that a breach of the said act and regulation could occur and the probable occupants of the said project never because known to the Petitioners, neither were Petitioners swere that the Second Respondents would not

recommend an alterante site. Moreover, there were several efforts made by the Petitioners to persuade the Respondents to recommend an alternate site. These efforts included two (2) mentings with the officials of the Third Respondents. It was only when the Respondents began to clear the site for the construction of the project that it became apparent that the Second Respondents would not recommend an alternate site and that they were bent upon colonizing Black people. In view of the Petitioners' efforts to achieve an amicable compromise, it would be unfair for the Respondents to contend that this action was not commenced timely.

It is the submission of the Petitioners that this action is based on Federally created right for which the sole remedy is equity and that statute of limitation barring action at law is inapplicable.

### MINT THO

#### FETITIONES ACTION IS NOT SARRED BY LACHES

It is alleged by the Respondents that Petitioners are guilty of laches in the prosection and commencement of this action. The defense of laches stees from the principle that equity aids the vigilant, not those who slumber on their rights and is designed to promote diligence and prevent enforcement of state claims. 2 FOMERCOL EQUITY JURISPHUDENCE, SECTION 418 (5th ed 194).)

must show a combination of inexcusable delay plus prejudice. In other words, the delay must be unressonable and that it prejudiced the defendant. <u>DUCAN v. BUNGER</u>—FIELD, 102 U.S. APP. D.C. 185, 251, F2d 396 (1957.) Both of these elements must exist if the defense is to be applicable. Neither element is present in this case.

The touchstone of the first element is diligence.

The Supreme Court excused a delay spent in an attempt to obtain mainstatement through Congress, MYERS v. INITED

STATES, 272 U.S. 32, 106-107, and the United States Court of Appeals excused delay caused by reasonable mistakes as to the proper procedure, PITTER v. STRAUSS. 104 U.S. APP. D.C. 301, 306, 261 F2d 767, 1958 (14 months) and as to applicable rule of law. (See DUCAN v. SULMERFIELD (SUPRA) (32 months.)

There can be no question but that the claim in this law suit was diligently asserted. It has been stated by the Petitioners over and over again that they, the Petitioners, appreciate the need for housing, but they are against the current splkney HILL project in that the sespondents are exploiting the need for nousing to promote racial segregation. Petitioners, through their attorney, made it abundantly clear that they would support the current SPINNEY HILL project provided the Second Respondents, URBAN RENEWAL AGENCY, would recommend an alternate site in the predominantly White neighborhood. In view of this, the Second Respondents made a werbal provide was taken in

good faits by Petitioners. Since Second Respondents had declared their intention to recommend an alternate site and since there had then been no breach of the Civil Rights Act, there was no cause of action for which the Petitioners could commence an action. It was only when the project was approved by the Third Respondents and the site for the construction was being cleared, that it became apparent that despondents were not going to recommend an alternate site and therefore were in breach of the Civil Rights Act. The said approval and the clearance of the site took place less than a year after the commencement of this proce-ding. Under these circumstances, there were no incommended delay and lack of diligence in bring this suic.

Likewise, the Asspondents have failed to show any appreciable amount of prejudice resulting from the alleged delay. POWELL v. ZUCKERT, 125 U.S. P.C. 55, 366 F2d 634 (1966). The record is barren of any evidence to support a finding of prejudice normally contemplated in applying laches such as loss of evidence and unavail-

ability of witnesses, and the facts of this case will not support a presumption of such prejudice. HICKS v. WIAVER, 302 F SUFF 619 (1969). The only prejudice claimed by the despondents is of financial nature, but there is not the slightest indication as to the magnitude of this financial projudice. Funds were expended on various matters in connection wit: the project, such as surveys, appreisals, land acquisition, etc. but not all of these expenditures would result in a financial loss to the Respondents if the site for the construction is relocated. For instance, the money spent on land acquisition will hardly cause a significant financial loss to the despondents since the lown can either sell the property or use the land for other necessary facilities. In short, the Respondents have simply not shown what its actual loss, if any, would be if the site has to be relocated. Moreover, to great extent, the Respondents were proceeding with the project and incurring these expenses at their own risk. Not only were the Respondents aware of the pending complaint, but they also

plaint insofar as it related to the claim asserted herein. Yet, the Respondents refused to include non-discriminatory sites for the housing project. Thus, even if the Respondents were substantially financially prejudiced, which was not established, they can hardly be heard to complain about lost costs incurred after their members acquired knowledge of the complaint, the merits of which they well recognized.

For the foregoing reasons, it is untenable for the Respondents to allege that Petitioners are guilty of laches.

#### POLIT THESE

# CAINTAIN THIS ACTION

atanding to a complicated specialty of Taderal Jurisdiction, the solution of whose proble of the any event
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Lacking amount be areafied by statute, a statute may create a new interval or which are time give a stand-ing to the who would otherwise be befored by the lack of a case or controversy. The case or controversy requirement of ACTICIA III. SECTION 2 of the Constitution does not require that an agariaved or adversely affected party have a personal accreate interest. See ETAIN OF MASHINGTON, DEPT OF GAME v. PEDPRAL PRAYS CONSTITUTION.

207 F. 2d 391. Ivan in cases involving original standing to sue, the sequence Court has not made economic

injury a prerequisite where the plaintiff has shown a direct personal interest. See SCHOOL DISTIGET OF ASTROTON TOMESHIPP. SCHUMPP. 374 U.S. 203 83 SCE. 1560. 10 L.Ed 22 944 (1763). In STATE OF MASHINGTON, EXPARTMENT OF GAME V. FEDERAL POWER COSSISSION, 207 F 2d 391, the Washington State Sportmon's Council, Inc., a non-profit organization of residents, the State of Washington, Department of Game, and the State of Washington, Perartment of Fisheries, opposed the construction of a dam because it threatened to destroy fish. The Federal lower Countsaion granted the linense, the interverse 9 spried for a rehearing which the Commission denied. Petitioners asked for review and the Court upheld their standing, noting; All are parties apprieved since they claimed that the Cowlitz Project will destroy fish in which they among others are interested.

Thus, it was therefore established that to acquire standing, a person must sequire direct personal interest.

But in PASAVILLE SEERING COMMITTEE v. FILINGTON. 387 F2d 179 the question of standing was extended to include all the residents of the neighborhood where a highway was to be constructed. It was held in the instant case that members of unincorporated essociation of some Regro and white businessmen, teachers, ministers, civic and professional leaders and residents of Northville where proposed interstate highway was to be constructed had standing to maintain action to restrain state officials from constructing the highway. Besides, where construction of a project is concerned, any person who is eligible for admission to public housing project administered by Housing Authority had standing to bring action to restrain further planning or construction of a public housing project that would allegedly perpetuate racially segregated system of public housing. CIVIL RIGHTS ACT of 1968, SECTION 601. In SLACKSHEAR RESIDERTS ORGANIZATION V. HOUSING AUTH OF CITY OF AUSTIN. 347 F SUPP 1138 (1972) it was held that

capacities and as representatives of all MexicanAmerican and Regro residents of city who were eligible
for admission to public housing project administered
by Housing Authority of city had standing to bring
action to halt further planning or construction of
a public housing project that would allegedly perpetuate racially segregated system of public housing.

Besides, where the allegations by the Petitioners raise questions of fact common to the class which they represent, the fact that some members of the class are personally satisfied with the Respondents' project is completely irrelevant. <u>POTTS v. FLAX.</u> 313 F24 284.

The reasons for requiring an individual Petitioner in a class action to be a member of the class do not necessarily preclude an association from representing a class where its reason d'erre is to represent the interest of that class. The contention that the Petitioners association cannot represent the right

of its members and therefore has no standing unless the interests of association itself are involved is untenable. In NAACP v. STATE OF ALABAMA ex rel PATTERSON, 357 U.S. 449, the Supreme Court specifically referred to the likelihood that the association itself would be adversely affected as a further factor pointing towards the holding of standing. Association, therefore, can represent the interest of all its members and the fact that some members have no standing does not preclude the association in maintaining an action to protect the interest of its members who have standing. Thus, in MICKs v. WEAVER, 302 F SUPP 621 it was clearly stated:

"We cannot deny the status of Rayford to maintain this suit, in which he has a clear interest, as a class action merely because he would be improper person to maintain a suit or some different claim. The class of course included all Negroes in Engaluse who reside in Federally assisted low rent public housing or who are eligible therefor."

It is clear that the Petitioner as present and future users of the system, have the right to have sites selected

for the public housing projects without regard to the racial composition of the surrounding neighborhood and therefore have standing to assert their right if it is being infringed.

In short where the dominant factor in selecting sites for location of public housing was the racial concentration, as in the instant case, and the location would perpetuate segregation, which is forbidden by both the equal protection clause of the Fourteenth Amendment and the Civil Rights Act of 1964 and 1968, the Petitioners and all the residents of the SPINNEY HILL neighborhood, as present and future users of the system, are entitled to maintain an action to restrain the construction of the said project.

It is the submission of this writer, that the Petitioners, as present and future users of the project, have standing to maintain this action.

#### POLET FOUR

## PITITIONERS CAN PROPERLY MAINTAIN CLASS ACTION

The class action device is a creature of equity and in true class action claims of parties can be aggregated to make jurisdictional amount. The question whether interest is held in common or otherwise is a matter of substantive law and whether such interest may be represented in a class action is a matter of procedure and is governed by Federal Rules of Civil Procedure (FEDERAL RULES CIVIL PROCESSEL, RULE 23(a), 23 U.S.C.A.

HULE 23(a) of F.H.C.P. which defines the basic ingredients of class interest and class action was clearly explained in <u>EUCERTON V. ARMOUN X CO. 94F SUPP 551.</u> In that case, DISTRICT JUDGE HALL stated:

Whether the individual claims involved in this suit may be aggregated in a class action depends
upon the type of class action
brought herein. The type of class
action, in turn, depends upon the
character and nature of the right
sought to be enforced by the plaintiff. ule 23(a) of the Fed. Rules

Civ. Proc., 28 U.S.C.A., describes the character of the rights which may be enforced by class actions as those which are, 'joint or common or secondary in the sense that the owner of the primary right refuses to enforce that right and a member of a class thereby becomes entitled to enforce it; (2) several, and the object of the action is the adjudication of claims which do or may afiect specific property involved in the action; or (3) several, and there is common question of law or fact affecting the several rights and common relief is sought.""

It must be noted that every interest created in favor of several persons in their own right is an interest in common and it was held in <u>COAL v. CITY OF</u>

ATLANTA, GA., 134 F SUPP >79, that a complaint alleging refusal to serve Negroes at restaurant on same basis as white customers in violation of the equal protection clause of Fourteenth Amendment to Federal Constitution stated a proper case for a class action, and Negroes could properly sue on behalf of all other Negro citizens, since they had an identity of interest

in having access to the restaurant on a non-regregated basis, (28 U.S.C.A., SECTION 1343; 42 U.S.C.A., SECTION 1383; U.S.C.A., SECTION 1383; U.S.C.A., SECTION

Under Federal rais providing that if persons constituting a close are so numerous as to make it improves the court, such of them as well theirly insure adequate representation of all may on nemalify it will maintain class section provided them is a court question of less on fact one provided them is a court question of less on fact one provided a source like analysis. In the Albert is and the source of the confidence of th

The persons constituting a class are so numerous as to make it inpracticable to bring them all before the court and, therefore, under Rule 23, Fed. Rules Civ. Proc. 28 U.S.C.A. this action has been properly brought by petitioners as the adequate representatives of the class of persons effected by Alia official action and activities of the respondents, and as the couracter of the right sought to be enforced herein is several, and as there is a common question affecting several rights of such persons constituting a class, and as a common relief is

sought by such persons and is available to such persons, the action has been been and is properly brought by petitioners herein and said petitioners herein are authorised to maintain the action.

Thus, it was held in the shove case that action against public elementary school authorities to redress alleged deprivation of civil rights by reason of segregation of children of Mexican descent was properly brought under several rules as class action by representatives of some 300 persons of Mexican descent affected by the official ectivities of respondents. Further, in JOHRSON v. YELLD-INC. 165 r SUPP 76, it was held that action by Negro citizens egainst members of Bersonnel Board of County and Director of Board for redress for deprivation of eivil rights guaranteed by the Fourteenth Amendment to the Federal Constitution was properly brought as a class action suit under Federal Rules of Civil Procedure insofar as it challenged refusels to furnish application forms to people other than white applicants solely on account of their race. Besides, in BROWDER v. GAYLE, 142 F.

statutes and ordinances which require segregation of white and colored races on motor buses of certain city were inconstitutional and also to enjoin enforcement of such statutes and ordinances an action was brought by four Pegro citizens where it was held that such action was class action on behalf of four individual plaintiffs who had suffered arrests because of violations of statutes and ordinances, and also on behalf of all other Negro citizens similarly situated.

In the instant case, it is the contention of the Petitioners that the proposed project is in direct contravention of <u>SECTION 601</u> of the <u>CIVIL RIGHTS ACT</u> of 1964. TITLE VI which provides:

"No person in the United States shall on the grounds of race, color or national origin, be excluded from participating in, be denied the benefit of or be subjected to discrimination under any program or activity receiving Federal financial assistance."

It must be noted that the current SPINNEY HILL URBAN RENEWAL PROJECT as presently constituted represents an

expenditure of Federal funds for the purpose of bringing about racial concentration contrary to the Federal guidelines. The location of the project with about 70% Black occupancy in an area with a large black population contravenes the provisions of SECTION 601 of the CIVIL RIGHTS ACT of 1964. It is unlewful to use Federal funds to promote segregation of races and this action was properly brought as a class action suit under Federal Rules of Civil Procedure insofar as it challenged the utilization of Federal funds to promote segregation. Besides, all the residents of SPINNEY HILL, including the Petitioners have an identity of interest in not allowing Federal Sunds to be used to coloniae Black people and therefore could properly maintain an action on behalf of themselves and on behalf of other people similiarly situated.

The Petitioners and all the residents of the SPINMEY HILL neighborhood are protected by <u>SECTION 601</u> of CIVIL RIGHTS ACT of 1964 and if the statute is being infringed, then of course, they have the right, as a

class, to maintain an action to prevent the breach. It is respectfully submitted that Petitioners as a class can maintain this action to protect their interest.

#### CONCLUSION

It is respectfully submitted by this writer that in view of the foregoing, the relief requested by the Petitioners therein should be granted and the Respondents' Cross Motion for Summary Judgment be decied.

Respectfully Submitted by:

Attorney for Petitioners Office & P.O. Address 287 Post Avenue Westbury, New York 11530 (516) 333-3555 JDP:HJF:iq F. #730800 UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

William Jones, et al.,

Petitioners,

-against-

NOTICE OF DEPOSITION

Robert C. Meade, et al.,

Civil Action No. 73 C 1104

Respondents.

SIR:

PLEASE TAKE NOTICE that on the 1st day of May,
1974, in Room G-80, United States Courthouse, 225 Cadman
Plaza East, Brooklyn, New York, the federal respondents in
the above entitled action will take the depositions of the
following petitioners:

William Jones at 10:00 A.M.

Thomas Holmes at 10:45 A.M.

Evelyn Brown at 11:30 A.M.

upon oral examination pursuant to Rule 30 of the Federal Rules of Civil Procedure, before a notary public or before some other person authorized by law to administer oaths. If not completed on that day, the examination will be continued from day to day until completed.

Dated: Brooklyn, New York

April 24, 1974

Yours, etc.,

EDWARD JOHN BOYD V United States Attorney Eastern District of New York Attorney for Federal Respondents 225 Cadman Plaza East Brooklyn, New York 11201

TO: Robert Rivers, Esq. 287 Post Avenue Westbury, N.Y.

HAROLD J. FRLEDMAN Assistant U.S. Attorney

# UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF: WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS, ROBERT CURRY, MRS. EVELYN BROWN, THOMAS HOLMES, MRS. EPPIE JOHNSON, WILLIAM HARRIS, MRS. ALBERTHA JOHNSON, MRS. ROSE WILLIS, MRS. SHARA BROWN, WILLIAM DORY, MRS. ELLA HARRIS, GEORGE ROSTKY and GREAT NECK MANOR CIVIC ASSOCIATION, and all other similarly situated,

Petitioners,

#### - against -

ROBERT C. MEADE, JAMES R. WELLS, MICHAEL J.,
TULLY, JR., GEORGE C. SOOS, FELIX G. ANDREWS,
JOHN F. MCDONALD, ARTHUR G. BINGHAM,
WILLIAM H. RYAN, JR., TOWN OF NORTH HEMPSTEAD,
First Respondent,

HECTOR H. GAYLE, Executive Director, BERNARD GARTLER, Chairman, JOSEPH CECI, FR. CURTIS KENDRICK, LOCAL URBAN RENEWAL PLANNERS.

Second Respondent,

JOHN MAYLOTT and GERALD V. CRUISE, DEPT. OF HOUSING AND URBAN DEVELOPMENT.

Third Respondent.

FIRST RESPONDENT'S ADDITIONAL MEMORANDUM OF LAW IN SUPPORT OF AFFIDAVIT IN OPPOSITION TO ORDER TO SHOW CAUSE AND CROSS MOTION FOR SUMMARY JUDGMENT

RICHARD J. OSTERNDORF
Counsel to
FRANCIS F. DORAN, Town Attorney
Town of North Hempstead
Attorney for First Respondents
220 Plandome Road
Manhasset, New York 11030

#### INTRODUCTORY STATEMENT

This action against the Town of North Hempstead ("First Respondents"), the Town of North Hempstead Urban Renewal Agency ("Second Respondents"), and certain individuals properly and improperly alleged to be officials or agents thereof, is to enforce rights under the Civil Rights Acts of 1964 and 1968 (42 U.S.C. §\$2000d et seq; 42 U.S.C. §\$3601 et seq).

Petitioners allege that the final determination of First Respondents on May 17, 1972, in approving the Spinney Hill Project, violated the Civil Rights Act of 1964 (Petition, par. 12). There is no allegation of a violation of any other cognizable statute by First Respondents.

It is alleged that Second Respondents "deliberately selected only one site in a predominantly Black area of Manhasset" (Petition, par. 5) and that said selection was in the form of a final determination made on the 10th day of May, 1972. (Petition, par. 4) This determination was allegedly made in violation of the Civil Rights Act of 1964 (Petition, par. 10).

Although mo claim of violation of the Civil Rights Act of 1968 is raised in the Petition, there are references to violations of the Civil Rights Act of 1968 in other papers submitted by petitioners. Therefore, that statute, as well as the 1964 Act, will be considered in this memorandum, although First and Second Respondents submit that Petitioners should be bound by their own pleadings.

#### FACTS

This is an action in which Petitioners allege that a certain determination of the Town of North Hempstead and certain Town Officials (First Respondents) violated the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. The Petitioners assert the First Respondents' approval of the "Spinney Hill Project" after public hearing held May 17, 1972, was in violation of the statute.

The Petitioners allege the Town of North Hempstead
Urban Renewal Agency and certain of its officials (Second
Respondents) proposed the "Spinney Hill Project" and "deliberately
selected only one site in a predominantly Black area of Manhasset . . ."
It is the position of the Petitioners that this determination made
May 10, 1972, violated the statute.

This action was commenced on July 24, 1973, some 14 months after the determinations which are the subject of the suit were made.

#### POINT I

## THE NEW YORK STATE STATUTE OF LIMITATIONS APPLIES IN THIS CASE UNDER 42 U.S.C. 2000d

42 U.S.C. § 2000d provides:

"No person in the United States shall on the grounds of race, color, or national origin, be excluded from participating in, be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance."

This statute creates a federal right to relief by action in this court. It does not, however, , ovide for the specific procedures to be followed in the case of civil actions by private parties for relief against violations under this section. \* Specifically it provides no limitation of time in which actions are to be commenced.

Since there is no federal statute of limitations of general application, the courts generally have applied what they deemed to be the forum state's statute of limitations most in point to the federal cause of action.

In <u>International Union</u>, <u>United Automobile</u>, <u>Aerospace</u>

and <u>Agricultural Implement Workers v. Hoosier Cardinal Corp.</u>, 383

U.S. 696 (1966), the Court considered an alleged violation of the LaborManagement Relations Act. In holding the State statute of limitations was

<sup>\*</sup> In fact, one leading commentator has offered that it is uncertain that private person has a right to maintain an action under this section. See Chester Antieau - Federal Civil Rights Acts § 138.

applicable, the Court articulated the following general rule:

"Accordingly, since no federal provision governs, we hold that the timeliness of a § 301 suit, such as the present one, is to be determined as a matter of federal law, by reference to the appropriate state statute of limitations." 383 U.S. at 704-705

Similarly, in Cope v. Anderson, 331 U.S. 461 (1947) the Supreme Court applied the same rule in another case invoking a federally created right, indicating that where no federal statute having fixed any period of limitations in respect of suits to enforce federal rights exists, the limitations of the state in which the action is brought, apply.

Again, in Holmberg v. Armbrecht, 327 U.S. 392 (1945), Mr. Justice Frankfurter speaking for the court said:

"The implied absorption of State statutes of limitations within the interstices of the federal enactments is a phase of fashioning remedial details where Congress has not spoken but left matters for judicial determination within the general framework of familiar legal principles." 327 U.S. at 395

This principle of Federal procedure applies whether the action would have been formerly one designated as legal, or as equitable. Moviecolor, Ltd. v. Eastman Kodak Co., 288 F. 2d 80 (2nd Cir., 1961); cert. den. 368 U.S. 821 (1961)

Therefore, reference to the State Law of New York for an applicable period of limitations by this Court is consistent with established law and mandated thereby.

#### POINT II

## THE APPLICABLE STATUTE OF LIMITATIONS UNDER NEW YORK STATE LAW IS FOUR MONTHS

In determining the proper statute of limitations applicable in this action, the Court should consider the procedural provisions of New York State law governing actions of this nature.

Had this action, insofar as it seeks relief against the First Respondents and Second Respondents, been instituted in the Supreme Court of the State of New York, it would have been a special proceeding pursuant to C.P.L.R., Article 78. In such a proceeding, Petitioners here would have requested the state court to determine:

- "..l. whether the body or officer failed to perform a duty enjoined upon it by law; or
- 2. whether the body or officer proceeded . . . without or in excess of jurisdiction; or
- 3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion . . . " C.P.L.R. §7803

The relief sought by Petitioners would have been in the nature of the old equitable writs of "certiorari to review, mandamus, or prohibition . . . ". C.P.L.R., § 7801

### C.P.L.R. §217 provides:

"Unless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding . . . "

Thus, Petitioners who fourteen months after the decisions in the case commence an action which would be required to be commenced within four months if in State court, are likewise barred by the four month statute in this Court.

The Petitioners cannot avoid the bar of time by reason of their attempt to seek "declaratory relief". Assuming that a declaratory judgment could properly issue in this case in the Supreme Court of the State of New York, the applicable period of limitations is four months under C.P.L.R. §217. Bloome v. Glasser, 33 A.D. 2d 563, 305 N.Y.S. 2d 283 (2nd Dept., 1969), affirmed 26 N.Y. 2d 865, 258 N.E. 2d 98 (1970)

#### POINT III

PETITIONERS ARE BARRED BY THE STATUTE OF LIMITATIOIS SET FORTH IN THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §§ 3601 - 3619; 3631

Section 810 of the Act (42 U.S.C. § 3610) provides that a civil action may be brought only after a complaint is filed with the Secretary of Housing and Urban Development ("HUD"), which complaint "shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred."

Although this Court requested Petitioners to file such a complaint and HUD agreed to accept such filing, First and Second Respondents never consented thereto or waived their objections to Petitioners' action on the grounds of untimeliness. (The Court is respectfully directed to the Transcript of the Hearing held before the Court on August 31, 1973, pp. 23-26, wherein counsel for both First and Second Respondents objected to the late filing of the HUD complaint.)

Similarly, Section 812 demands that civil actions brought thereunder be "commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred."

Even if Petitioners are not asserting a cause of action under the 1968 Act, the short statute of limitations contained therein is evidence of Congressional intent, that these actions should be prosecuted without undue delay.

It is proper for this Court to consider this last cited section which contains a brief period of limitations when considering the limitations to be applied in the section which lacks a specific or express period of time. In International Union, United Automobile, Aerospace and Agricultural Implement Workers v. Hoosier Cardinal Corp., supra, the Court reasoned that a six month statute of limitations in another section of Federal Labor Law "... suggests that relatively rapid disposition of labor disputes is the goal of Federal Labor Law."

That reasoning, in light of the 1968 Civil Rights Act, 42 U.S.C. § 3631, which provides a short period of limitations of 180 days, requires the conclusions that it was the intent of Congress to obtain rapid disposition of Civil Rights Cases, especially where large sums of public funds are involved and where delay by untimely and lengthy litigation could defeat that progress which the law seeks to insure.

#### CONCLUSION

The Petitioners have failed to commence a timely action and the complaint should be dismissed as to First Respondents and Second Respondents.

Respectfully submitted,

RICHARD J. OSTERNDORF
Counsel to
FRANCIS F. DORAN, TownAttorney
Town of North Hempstead
Attorney for First Respondents
220 Plandome Road
Manhasset, New York 11030
516 MA 7-0590

JOSEPH H. DARAGO and JOSEPH A. GUARINO, of Counsel on the Brief JDP:HJF:iq F.#730800

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

William Jones, et al.,

Petitioners,

- 0020101

NOTICE OF MOTION FOR SUMMARY JUDGMENT

-against-

Robert C. Meade, et al.,

Civil Action No. 73 C 1104

Respondents.

SIRS:

PLEASE TAKE NOTICE that upon the annexed Federal respondents' Rule 9(g) Statement, Memorandum of Law and Affidavits, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this court on May 10, 1974 at 10:00 a.m. in the forenoon of that day, or as soon thereafter as counsel can be heard, at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201, before the Honorable John R. Bartels, Courtroom No. 4, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting summary judgment in favor of Federal respondents on the grounds that there is no genuine issue as to any material fact herein necessary for their being granted summary judgment, and that Federal respondents are entitled to summary judgment as a matter of law, and for such other and further relief as to this court may seem just and proper.

Dated: Brooklyn, New York April 29, 1974

Years, ouc.

EDWARD JOHN BOYD V United States Attorney Eastern District of New York Attorney for Federal Respondents 225 Cadman Plaza East Brooklyn, new York 11201

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By:

Harold J. Fried an Assistant U.S. ctorney

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JDP:HJF:ec F. # 730800

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

WILLIAM JONES, et al.,

Petitioners,

Civil Action No. 73 C 1104

- against -

ROBERT C. MEADE, et al.,

Respondents.

FEDERAL PESPONDENTS' STATEMENT OF MATERIAL FACTS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED PURSUANT TO RULE 9(g) OF THE LOCAL RULES

There is no genuine issue as to the following  $\mbox{material}$  facts:

- 1. The proposed Spinney Hill housing site, consisting of 100 units, of which 20% will be low income and 80% moderate income, to be situated in the Spinney Hill NDP project, is being developed by the North Hempstead Urban Renewal Agency ("LPA"), an agency of the Town of North Hempstead ("Town").
- 2. The LPA submitted an NDP application for the Spinney Hill site to the Department of Housing and Urban Development ("HUD") on April 17, 1972.
- 3. The land acquisition for the housing site in question is in part being funded by HUD and HUD will not fund the construction on the site or subsidize the rentals.
- 4. Pursuant to 42 U.S.C. Section 2000d-1 et seq., HUD promulgated the NDP Project Selection System, 24 C.P.D.
- 511 which Project Selection System criteria provides an institutionalized method for HUD to make an informed decision as to the effect of an NDP application on the minority concentration within the area requesting Federal financial assistance.

- 5. The Spinnev Hill NDP application was reviewed by HUD staff, in order to determine if the application complied with the Housing Act of 1949, as amended, and the Civil Rights Acts of 1964 and 1968.
- 6. "he Spinney Hill NDP was given a "good" rating as to whether there was a realistic plan to expand the supply of housing for low and middle income families outside areas of minority concentration.
- 7. In order for the Town to secure a recertification of its initial Workable Program for Community Improvement, HUD required the Town to make efforts to secure alternate sites for low-income housing outside areas of minority concentration.
- 8. On May 13, 1971 the Town passed resolution 2971971, publicly committing itself to provide subsidized
  housing on an equal housing opportunity basis throughout the
  Town in an effort to prevent ghettoization.
- 9. The Town has encouraged and received several proposals for the construction of low income housing outside areas of minority concentration.
- 10. The Cuttermill Poad site (also known as Watermill), providing 72 low income units outside areas of minority concentration has been selected and approved by the North Hempstead Housing Authority and HUD has given it site approval.
- 11. The Port Washington Boulevard site consisting of 28 low income units outside areas of minority concentration has been approved by the Morth Hempstead Pousing Authority and HUD has given it site approval.
- 12. The basis for the HUD approval on September 15, 1972 of the Spinney Hill NDP application is the strong committment by the Town to construct 1 w income housing outside areas of racial concentration s indicated in paragraphs 6 12 above.

- 13. On September 11, 1973, pursuant to 42 U.S.C. \$2000d-1 et seq., and 24 CFR \$1.7 et seq. petitioners filed a complaint with HUD alleging that the Federal funding of the Spinney Hill site was in violation of Federal law.
- 14. Upon receipt of the complaint HUD instituted a review of the Spinney Hill Neighborhood Development Program that included meetings with the petitioners, the Town and LPA officials.
- 15. HUD concluded that the complaint be closed because there was no basis in fact for the alleged violations of the 1964 and 1968 Civil Rights and the Town's policy to provide low income housing throughout North Hempstead was a desirable policy in conformance with the law.

Dated: Brooklyn, New York April 30, 1974

> EDWARD JOHN BOYD V United States Attorney Attorney for Federal Respondents

By:

Harold J. Friedman Assistant U. S. Attorney

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1992 A.M
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Petitioner,

AFRIDAVIT

73C 1104

-against-

Civil Action

C1: 17:5

PODERT C. HEALE, et al.

Respondent

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STATE OF MEW YORK )
DISTRICT OF NEW YORK) ss:

· · · · ·

GERALD V. CRUISE, being duly sworn, deposes and says:

- 1. I am the Program Manager for Sub-Area 2 of the New York Area Office of the United States Department of Housing and Orban Development (herein after "HUD"). Inpart, this area encompasses long Island, and in particular the Town of North Hempstead. I am the general supervisor of our field staff, and in the present y like a revision and I are marriar with the amorn y will Seighborhood bevelopment from the feature "Program").
- 2. The Spinney Hill housing size constraint of 1.0 low and coderate income proposed to be apartments/funded under the new York State Hitcheil-land program, is situated in part of the Spinney Will have applied rate and said 1.2 is being developed by the North Hempsters Urban Tancord Andrew (a scinair of "PPA"). The 1.A prepared on 1.2 application and constaints of a field representative, engineer.

personnel. By recommenders of approval were later concurred in by the Acting MUD Director of Operations.

- 3. Pursuant to the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 d-1, and Title VIIIof the Civil Rights Act of 1968, 42 USC 5601, et seq., HUD has promulgated the Neighborhood Development Program Project Selection System, 24 C.F.R. Part 511,a copy of which is annexed hereto as Exhibit A. The regulation provides an institutionalized method by which HUD might make an informed decision on the effect of approving an NeP application on the racial or cipority concentration within the locality requesting federal assistance.
- 4. In accordance with the provisions of 24 C.F.R. Part 511, the NDP application was reviewed and rated by my staffand HUD's Equal Opportunity Section, as to compliance with the Housing Act of 1949, as amended, and the Civil Rights Acts of 1964 and 1968. The Spinney Hill NDP was given an "adequate" rating by HUD as to whether there has been a significant expansion of the supply of standard housing for low and moderate income families in a non-discriminatory way. HUD gave it a "good" rating as to whether the locality had a realistic plan to expand the supply of such housing outside areas of minority concentration. The application was subsequently thoroughly reviewed both technically and legally by HUD and the Spinney Hill NDP was approved by HUD on September 15, 1972. Furthermore, the Spinney Hill NDP was found to meet all the prerequisites of 24 C.F.R. Part 511.
- 5. All funding for NOP's is done annually, on a one year fiscal basis, known as an "action Year', with applications for funding for each consecutive action year having to be reviewed and approved by HUD (42 USC 1469a (a)(1), 1469c (b). The Spinney Hill NDP was funded by HUD for the first action year commencing July 1, 1972 and terminating June 30, 1973.
- 6. HUD approved the overall Spinney Hill Not and, Internalia, has agreed to pay the cost of acquiring the lead for the housing site in question, but given the limited nature of HUD participation in an NOP, HUD does not review and

ment being constructed within the NOP, which housing development will be financed by the costs of the very

n rova ti

7. A condition precedent to HUD funding of an HDR is that a Workable Program for Community Improvement must be contified by HUD (42 USC 1451 (c), 1469 (a) (1)). In order for the Town of North Hempstead to secure a recertification of its initial Morkable Program, BUD had required that the Town make efforts to secure alterante sites for low-rent housing outside areas of minority concentration befor it approved the first action year Spinney Hill NDP. To this effect, the Tolo has subditted, clear and convincing evidence showing that it would comstruct housing outside of areas of minority racial concentration. (Exhibit B att. L. d lereto.) The Town of North Hempstead Housing Authority has received reveral proposals for the construction of low-rent housing on sites which are not in areas of minority concentration. The Cuttermill Ross site, providing 72 low-rent family apartments, has been approved by the Housing Authority and is located in a predominantly white area of North Noopstead. This site is currently undergoing technical review by HED. About a site which has been approved and is outside areas of minority concentration is the Port Washington Boulevard site that will provide 28 low-rent apartments.

Miller

8. The Spinney Hill NOP was approved by HUD even though it is located within an arth of recial contentration. The basis for our approval was the compitation of the Tolan to continue temperate last into outside the TOLAN recially concentrated area. The same were recolation of the Tolan, the Cuttermill Road and Port Mashin that Rouleward projects are all evidence of the Town's efforts to fulfill its consistment to low and moderate income housing on a town-wide integrated basis. The Spinney Hill NDD was approved as part of an overall proposal that included additional housing to be constructed outside areas of minority concentration. On information and belief it was taken into consideration that children the would be residing in the Spinney Hill housing site of the stronger integrated schools.

ilen sie

9. On information and belief, 150 households contesting of 120 to 150 to white to inics, and/or individuals, will be displaced by the Spinney Hill 120. The bounds site in question will consist of 100 apartments in addition to the 72 plo cod at the Cuttermill Road site, and the 20 at the lors Whelin too. Bouldward site, both of the letter sites being estaids the Spinney Hill N.D.

. 13

This will result in the construction of low and moderate income housing on an integrated basis throughout the Town.

10. On information and belief, the vacancy rate for rental apartments in the Town on North Hempstead is 2.2% and this very low percentage which is prevalent throughout Nassau County is indicative of the vital need for low and moderate income housing which contagn will be somewhat alleviated by the construction of housing on the site in question.

11. HUD in effectuating the provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 d-1, has promulgated an administrative complaint procedure. 24 C.F.R. Sections 1.7 et seq. Pursuant to Section 1.7 (b) of this procedure, "any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part 1 may ... file with the (Department of HUD) a written complaint." Upon information formal and belief no such/complaint has been filed by any of the plaintiffs.

12. HUD is aware of the considerable minority community support for the Spinney Hill housing development. The first year NDP application contains a statement of "citizen involvement," which indicates that several community organizations in North Hempstead such as the Great Neck Coalition for Better Housing, whose properties is black, the Economic Opportunity Council (an acceptance of poverty Group), and the Mount Olive Daptist Church favor the development. In addition, the file contains a petition signed by 700 local residents who favor the Spinney Hill housing complex. The Interfaith Council of Manhasset, a group of churches, which also supports the project, is providing rent subsidies.

Gerald Colliss
Program Manager
Sub-Area 2

Urban Davelopment

Sworn to before me this 24th day of August, 1973

Jan Jo. Lottis Otary Dile

\*Qualified in New York County Commission expired March 30, 1975

DI.

UNITED STATES DISTRICT COURT FILED EASTERN DISTRICT OF NEW YORK - 15 CITIES OIL U. S. DISTRICT COLLET ... IN THE MATTER OF THE APPLICATION OF: AUG 21 1973 WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS, ROBERT CURRY, MRS. EVELYN BROWN, THOMAS Civil Action HOLMES, MRS. EPPIE JOHNSON, WILLIAM No. 73 C 110. TIME A.M. HARRIS, MRS. ALBERTHA JOHNSON, MRS. ROSE P.M. WILLIS, MRS. SHARA BROWN, WILLIAN DOBY, MRS. ELLA HARRIS, GEORGE ROSTKY and GREAT NECK MANOR CIVIC ASSOCIATION, and AFFIDAVIT OF all other similarly situated, HECTOR H. GAY IN OPPOSITIO. Petitioners, TO ORDER TO SHOW CAUSE OF -against-PETITIONERS ROBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., GEORGE C. SOOS, FELIX G. ANDREWS, JOHN F. McDONALD, ARHTUR G. BINGHAM, WILLIAM H. RYAN, JR., -- TOWN OF NORTH HEMPSTEAD. First Respondent. HECTOR H. GAYLE, Executive Director. BERNARD CARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK, - LOCAL URBAN RENEWAL PLANNERS, Second Respondent. JOHN MAYLOTT and CERALD V. CRUISE, DEPT. OF HOUSING AND URBAN DEVELOPMENT, Third Respondent. STATE OF NEW YORK ) SS: COUNTY OF NASSAU ) HECTOR H. GAYLE, being duly sworn, deposes and says the following: 1.) That I am the Executive Director, Town of North Hempstead, Urban Renewal Agency, the second respectant hireir and I am familiar with the force only circle access of

EXHIBITB

proceeding.



- 2.) That I submit this affidavit in opposition to the Petitioners application for an injunction.
- 3.) That your deponent has been contacted by many of the Petitioners in this action and they have advised me that they did not consent to their being named as a petitioner in this proceeding. That annexed hereto and made a part hereof and marked "EXHIBITS 1A, 1B and 1C" are signed statements from several of the petitioners disavowing any right to the use of their names as Petitioners.
- Neck Manor Civil Association is composed of a small group of individuals and that Petitioner, William Jones, does not speak for the vast majority of the residents of Great Neck Manor. That the vast majority of said residents are overwhemingly in favor of the re-development of the so called Spinney Hill area and have so stated their support at two public meetings in 1972 at various private meetings, and by affixing their names to a petition containing over 700 signatures. (See Attached) That included in this group are at least two (2) past presidents of the Great Neck Manor Civic Association. That Great Neck Manor is not part of the area to be re-developed.
- 5.) (a) I would like to clarify what the Second Respondent proposes to accomplish in the "Spinney Hill" area of Manhasset, Town of North Hempstead, Nassau County, New York. We are re-developing a blighted area within the unincorporated area known as Manhasset, which will include commercial, recreational and residential buildings, all peared toward a better social, economic and environmental climate for the residents.

Approximately 80% of the buildings in

the area are classified as "blighted". This deterioration has and will continue to effect the surrounding areas of Spinney Hill and has resulted in overcrowding, dangerous living conditions, etc.

- (b) The area in question was not chosen by the Second Respondent. The First Respondent, Town of North Hempstead, and its Planning Board, keeping in mind the criteria set forth by the Department of Housing and Urban Development, have established a policy of encouraging construction, re-construction and re-development of subsidized housing in the Town of North Hempstead. Thus, the sites re chosen by the First Respondent, but only after comprehensive studies to determine that any site will comply, basically, with the prerequisites set forth by the Third Respondent, to wit: That housing must be built to re-integrate the area and not just for low income families; that when you tear down housing you must re-build on a one to one basis; that while you are re-developing an area you must provide opportunities outside of the area on a freedom of choice basis. Obviously, some people will stay and some will move out of the area. The Town passed resolutions to this affect on April 14 and May 13, 1971 and a copy of same are annexed hereto and made a part hereof and marked "EXHIBITS 2A and 2B".
- (c) The First Respondent proceeded to implement these resolutions by encouraging the following projects:
- i) An E.O.C. group in Port Washington formed the Cow Pay rousing Comp., and received tax abatements and other assistance from the Town of North Hempstead and constructed units of moderate income family units which were completed in 197 units crected outside the areas of racial concentration.

- (ii) The Town of North Hempstead gave tax abatements and otherwise encouraged a Senior Citizens Corporation to build 110 units of housing, under a N. Y. State Program in New Hyde Park; also outside the area of racial concentration.
- (iii) The Town of North Hempstead Housing

  Authority selected a site in Great Neck on Watermill Road for
  the construction of 72 units of low income housing. This proposal was submitted to the Department of Housing and Urban
  its

  Development and/approval is necessary before the project can be
  started; this site is outside the area of racial concentration.

(iv) The Town of North Hempstead Housing Authority constructed a Senior Citizen Housing in an area adjacent to the area to be re-developed herein. This area, also known as Spinney Hill, was predominantly black and yet the Senior Citizen Complex has produced a population of 60% black and 40% white.

It can thus be seen that the First Respondent has indeed encouraged a policy of developing housing throughout the Town of North Hempstead in areas that certainly could not be called "areas of racial concentration". I submit that the residents—of Spinney Hill do have a choice of housing throughout the Town of North Hempstead and to prevent the re-development of Spinney Hill would amount to our "giving up" on ever improving the blight in the area contrary to the wishes and desires of the residents who desperately want and need this re-development project.

Texas

- (d) May I respectfully point out to the Court that the Spinney Hill project would contain 20% of low income residents with rent supplements and 80% of middle income residents who will pay approximately \$55.00 per room.
- 6.) It is interesting to note that our experience, thus far, has indicated a substantial number of inquiries for the Spinney Hill Complex has come from white individuals.
- 7.) The Hearing mentioned by the Petitioners refers to the North Hempstead Town Board Hearing which took place on June 13, 1972. At this meeting and at a meeting of the North Hempstead Planning Board which took place on May 10, 1972, the overwheming majority of people and organizations spoke in favor of the Spinney Hill project. These included the NAACP, Manhasset Inter-Faith Council, Manhasset-Great Neck E.O.C., League of Women Voters of Manhasset, Great Neck Chamber of Commerce, Great Neck Community for Human Rights, etc. Very few individuals spoke against the project. In fact, most of the Petitioners were in favor of same. This hearing was preceded by many other meetings with every conceivable group in the community over a substantial period of time.
- 8.) The Petitioner states that no alternate site was recommended. In light of the foregoing and particularly paragraph 5 herein, this contention is completely without foundation in fact and is baseless:
- 9.) The Petitioner states that the project would raise taxes. This, despite the fact that the hearings established that 35 new families would be brought into the area with

no discernable effect on the school system (11% black) nor the tax base.

- 10.) Upon information and belief, the Petitioners did not ask for nor request a hearing before the Third Respondent as mandated by law. I submit that this failure to "exhaust administrative remedies" is sufficient grounds for dismissal of the Petitioners complaint and denial of the instant application.
- 11.) This action is being brought on more than one year after the aforesaid hearing before the North Hempstead Town Board and approval of the resolutions hereinbefore recited. This would certainly also mandate a dismissal of the complaint since the action is not timely made.
- 12.) May I also respectfully point out to the Court that the Great Neck Committee for Human Rights and the NAACP have provided approximately 50 units of housing outside areas of racial concentration. In addition, within the Great Neck Area, within the past two years, the number of minority persons living in housing and apartment units outside the areas of racial concentration has increased from approximately .65 families to approximately 40 homeowners and approximately 85 families in apartments.
- 13.) That the Second Respondent does herewith join with the First Respondent in its Motion for Summary Judgment herein.

WHEREFORE, deponent respectfully requests that the Petitioners application be denied in all respects.

Sworpshop before this work york

HECTOR H. GAYLE

HECTOR H. GAY

-6

WIND CLEANING

UNITED STATES DISTRICT COUNT EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF: WILLIAM JOHES, et al..

Petitioners

-against-

RGBERT C. MEADE, et al.

Respondents

Civil Action No. 73 C 1104

TIVACUE 'A

- 1. I am the Assistant Regional Acts or return for Equal Opportunity for Region II of the United States Departure of Housing and Union Development (hereinafter "IDDD"). I exemple delta of responsibility within the States of New York and New Jersey, the General thing fine to Rico and the U.S.

  Virgin Islands, for the accommistration of with visit of the 1.65 Civil Rights Act (42 USC 1, et seq.), Title VI of the 1964 Civil Rights Act (42 USC 2000d), Executive Orders 11063, 11246, 11375 and 11478, as well as those provisions of Title 24 of the Code of Federal Regulation relating to the implementation of the aforementioned statutes and Executive Orders.
- 2. On September 11, 1973, my office received a complaint alleging violation of Title VI of the 1964 Civil anghts Act and the Due Process clause of the Fifth Amendment. (Exhibit 1) The complaint, filed by Robert Rivers, Estable as counsel for the Great Neck Civic Amendment, alleged that the Spinney Hill Neighbor Development Program would further concentrate minority population within the Spinney Hill community and thus violate plaintiffs' civil rights.
- 3. An investigation of the complaint was immediately commenced. Meetings were held with the complainants, scal redevelopment officials and HUD program personnel. An exposite course than of HUD files regarding the Town of North Hempstead was conducted. (Exhibit 2) The investigation culminated with the submission on November 5, 1973 of a Final Investigation Report. (Exhibit 3) It was the conclusion of the Report that there was no substance to the alleged civil rights violations. It recommended that the Town of North Hempstead be advised to continue proposing housing sites outside areas of minority concentration in accordance with the Town Board's resolution of May 13, 1971. (Exhibit 4)

11 TO

- 4. After examining the Report and its conts, a November 14, 1974 I concurred with its recommendation, and constrained. This basis for my concurrence was the indistance of HUO's New York Area Office, that the Town Mourd of the Town of North Hempstead official was and the community to a policy of providing housing opportunities for a particular within, as well as without, areas of minority concentration.
- 5. The Town of North Hempolean has to a differential steps to emplement such a policy. It has stated its learned to apply to construction of her and moderate income housing outside a case of a differential too. Three sites were proposed for the construction of a differential coince. Three found to be acceptable by HUD and, a to the arm and of the Equal Groortunity Division of the New York Area Others, processes. If there applications was commenced.
- 6. It is my opinion, that we also we have I investigative Report, and the actions already in a by the second file of the civil elympton was no substance to the civil elympton with the civil elympton of the civil elympton

A COLOM

at hegional Administrator

· ...l Opportunity

Sworn to before me this 30th day of April, 1974

NOTARY PUBLIC

STEVN LOVE NAW Y & 2409606

**ROBERT RIVERS** ATTORNEY AT LAW

WESTBURY, N. Y.

September 6, 1973

Dept. of Housing & Urban Development Regional Administrator 26 Federal Plaza Room 3530 New York, New York

Attention: Mr. William Greene

Great Neck Manor Civic Association vs Town of North Hempstead and Local Urban Renewal Planners

Dear Mr. Greene:

With regard to the above-mentioned matter, please be advised that on the 31st day of August, during the hearing at the United States District Court for the Eastern District, I was advised by Hon. John R. Bartels to make a formal complaint to the Department of Housing and Urban Development in behalf of My client, Great Neck Manor Civic Association.

I have, therefore, made a formal complaint in accordance with the said advice which I hope will be seriously considered by your office. Please let me know whether your office is amenable to discussing this formal complaint with the undersigned and my client. Enclosed please find a copy of my complaint.

Your prompt attention to this matter will be most appreciated. Thank you.

RR/es

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OFFICE OF REGIONAL COUNSEL SEP 11 173

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FEDERAL DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT UNITED STATES OF AMERICA

GREAT NECK MANOR CIVIC ASSOCIATION,

Complainant,

-against-

TOWN OF NORTH HEMPSTEAD,

COMPLAINT

Pirst Respondent,

LOCAL URBAN RENEWAL PLANNERS,

Second Respondent.

after referred to as "Association" by their Attorney, ROBERT RIVERS, complaining of LOCAL URBAN RENEWAL AGENCY, hereinafter referred to as "Agency" and the TOWN OF NORTH HEMPSTEAD hereinafter referred to as the "Town" respectfully alleges as follows:

That the said agency at a public meeting surmoned on the 10th day of May, 1972, proposed to construct eight to ten million dollar Urban Renewal Housing Project for Spinney Hill in the Village of Manhasset and Great Neck, County of Nassau, State of New York.

That the said Agency in their proposal for the construction of the Housing Project deliberately selected only one site in a predominantly Black area of Manhasset despite the fact that a survey previously taken by the Town indicated that the vast majority of the tenants applying for the new housing are Black.

That the said Association, through their

President in the name of WILLIAM JONES and the said ROBERT RIVERS

endeavored to bring to the attention of the Agency at the said

public meeting the consequence and the legal implication of

not only their failure of recommending an alternate site, but

also of concentrating large numbers of Black people at one

neighborhood.

made it abundantly clear that the members of the said association acknowledge the critical need for housing development not only for the Town of North Hempstead but for the entire County of Nassau. Further, they recognize that this need exists not only for moderate and middle income housing but for low income housing.

support housing, however, they are opposed to the current Spinney Hill Urban Renewal Project on the grounds that as presently constituted, it represents an expenditure of Federal funds for the purpose of bringing about racial concentration contrary to the federal guidelines and contrary to the enlightened concept of scatter site dwelling. That on its face as presently constituted, the plan is prima facie, at variance with the National Housing Policy and will bring about an increase in racial segregation.

That the proposed project is in diagram contact vention of Section 601 of the Civil Rights Act of 1964, Title VI, which provides,

"No person in the United States shall on the grounds of race color or National origin, be excluded from participating in, he denied the benefit of or be subjected to discrimination under any program or activity receiving federal financial assistance."

The location of the project with about 70% Black occupancy in an area with a large Black population will impede a workable program for community improvement in coarformity with the Civil Rights Act of 1964.

That the said Agency has not made any attempt to acquire non-segregated sites within the Town of North Hempstead for the purpose of building low and moderate income housing of an equal potential as that which is now pro-

1. 6

posed for Spinney Hill,

That the Town of North Hempstead on the 17th day of May, 1972, approved the project knowing that it is in direct contravention of the Federal guidelines and Civil Rights Act of 1964 and contrary to the enlightened concept of scatter site dwellings.

That the Department of Housing and Urban

Development (HUD) also approved and has commenced to fund the said project. HUD, therefore, has violated the due process clause of the Fifth Amendment or Section 601 of the Civil Rights Act.

That upon the failure of the Local Urban Renewal Agency and the Town of North Hempstead to meet the pre-requisite, it is the intention of the members of the said GREAT NECK MANOR CIVIC ASSOCI ATION to lodge a formal complaint before the Department of Housing and Urban Development pursuant to the Civil Rights Act of 1964 and 1968.

Yours etc.,

TO; HUD Regional Administrator 26 Federal Plaza New York, NY

> RICHARD OSTERNDORF Attorney for First Respondent 220 Plandome Road Manhasset, NY

RESSA & NAPPI Attorney for Second Respondent 33 Main Street Port Washington, NY

U.S. ATTORNEY
225 Cadman Plaza
Brooklyn, NY

ROBERT RIVERS, ESQ, Attorney for Complainant Office & P.O. Address 287 Post Avenue Westbury, NY 11590

day of

STATE OF NEW YORK. COUNTY OF

#### AFFIRMATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the courts of New York State, states: that deponent is

the attorney(s) of record for in the within action; that deponent has read the foregoing and knows the contents thereof; that the same are true to deponent's oven knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true. Deponent further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: The undersigned affirms that the foregoing statements are true, under the penalties of perjury. Dated: STATE OF NEW YORK. INDIVIDUAL VERIFICATION COUNTY OF , being duly sworn, deposes and says that deponent is in the within action; that deponent has read the foregoing and knows the contents thereof; that the same are true to decoment's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true. Sworn to before me, this day of STATE OF NEW BORK, CORPORATION VERIFICATION COUNTY OF \$5.: , being duly sworn, deposes and says that deponent is the the corporation named in the within a dan, that deponent has read the foregoing and knows the control thereof; and that the same are true to deponents own knowledge, except as to the matters thereon some to be alleged upon information and belief, and as to those matters deponent believes them to This conficction is a laby depondent I cause corporation. Deponent is an officer thereof, to-wit, its The granules of a granules belief as to all matters not stated upon deponent's knowledge are as follows: Sworn to before i.c. bei day of AFFIDAVIT OF PERSONAL SERVICE AFFIDAVIT OF SERVICE BY MAIL STATE OF NEW YORK COUNTY OF 1,35590 STATE OF NEW YORK COUNTY OF , being duly Ellen 5 Parre - being duly sworn, defoses and says that defonent is over the age of 18 years is not a party to the action and resides at heavy colonials sworn, defeses and cays that deponent is over the age of 18 years, is not a farty to the seen n and resides at That on the 19 day of day of September 1913 at No the deponent served the within Complete 4.6 deponent served the within ship fortiger the attorney 1 : 1.91 thereof. Department but, the person sent of as aforesaid to be the person mentioned only described in said papers as the the within action at the aldress designated by said attorney by depositing the same in a postfaid wrapper in an official depository of the United States Post Office : the State of thereis Sworn to before me this Sworn to before me this

Sir : PLEASE TAKE NOTICE that the within is a true-certified-copy of a

duly entered in the office of the clerk of

on

19 19

Dated:

Yours, etc.,

ROBERT RIVERS

Anomeys for

Office and Post Office Address 207 POST AVENUE Westbury, New York 11590

To

Attorney for

NOTICE OF SETTLEMENT

Sir : PLEASE TAKE NOTICE that

of which the within is a true copy will be presented for settlement to Mr. Justice

one of the Justices of the within named Court

at

on the

day of M.

19

Dated:

Yours, etc.,

ROBERT RIVERS

Attorneys for

Office and Post Office Address

287 POST AVENUE

Westbury, New York 11590

To

Attorney for

GREAT NECK MANOR CIVIC ASSOCIATION,

Complainant,

-against-

Index No.....

TOWN OF NORTH HEMPSTEAD,

First Respondent,

LOCAL URBAN RENEWAL PLANNERS,

Second Respondents.

COMPLAINT

ROBERT RIVERS

Attorneys for Complainant

Office and Post Office Address

287 POST AVENUE
Westbury, New York 11590

(816) ED 3-3555

To

Esq

Attorney for

Service of a copy of the within

is hereby admitted.

Dated, N. Y.,

19

Attorney for

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#### FINAL INVESTIGATION REPORT

COMPLAINT NO. 02-74-07-009-300

CREAT NECK MAHOR CIVIC ASSOCIATION (Complainant)

VB.

TOMN OF NORTH HOMPSTEAD AND LOCAL URBAN RESIDUAL PLANSERS. (Respondent)

Investigated By:

Complaince Specialist

Concurred By:

Theodoro h....

Director, EO Conditance Division

Concurred By:

Date

Michael A. Colo Assistant Rolling & Administrator

for Equal One headby

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of Complaint.

#### FINAL INVESTIGATION REPORT

Subject: Complaint No. 02-74-09-009-300
Great Neck Manor Civic Association
vs. Town of North Hempstoad and
Local Urban Renewal Plannors

Issues: This complaint was transmitted by letter dated September 6, 1973 from Robert Rivers Attermey for the complainants. Ar. Rivers had been advised by the reactable John R. Bartels, U.S. District Court for the Restern District during the hearing on Milliam Jones et al. Robert C. Resde et al. Rector Gayles of and John Maylett et al. Civil Action Ro. 73C 1154 to miss a formal complaint to the Department of Housing and Urban Baylogment on behalf of his Client, Great back Emper Civic Advision on September 11, 1973.

The complainant alleges in the complaint that the Current Spinney Hill Urban Renewal Project on presently constituted in represents an expenditure of Pederal De ds for the purpose of beinging about racial concentration contrary to the following additions ....and that the proposed project is in direct or browntion of Pection 601 of the Civil Hights Act of 1967. The that the Department of Hemsing and Grien Devel point along strovet and has considered to find the roll project. Ball, to share, has violated the due process clause of the rath Ace Scant or Section 601 of the Civil Hights Act.

The Urban Renewal Program which is the subject of this complaint is the Spinney Will Reighboursal Development to the of the Team of North Heapsware. Planak , for the councy with analymbouhood resulted from a nervey make in 1965 by see fire a may and and May, entitled "legional Plan for the Count Real Paraula." The the survey Spinney Will was identified as a bill plana area. Too Town of North Heapstood, using the Mai thousand it volopment Program of HUD, and ided for words to divelop the apinney Hill neighborhood. (The Exhibit 3)

A Neighborh and Pevelopment Program is a program to help communities carry out neighborhood development programs of urban renewal in one or more urban renewal areas on the backs of an annual increment. (See Exhibits 425) Applicants may be call a, counties, or other municipalities. The locality rada have a carrently contified Workable Program for Cummunity Laprovement. (Dec Ethibits)

The Workable Program for Community In covement is an official plan of community action which is a prosequisite for certain Federal aids.

Initial certification of a Workable Program is for two years. Recentification is based upon review of programs submitted by the community to HUD every two years. The guidelines for evaluation of Workable Program Applications is set forth in HUD Handbook 125 7100, la entitled Workable Program for Community Improvement, queed september 1970. (See Exhibit?)

Upon receipt of an HDP application by HUD the application is remained and evaluated. The HDP Project Selection System is set forth in 24 CFR, Part 511, and in NDP Handbook Circular DD7382.3, entitled "Heighbortee" Development Program Project Selection System" dated 7/21/72. (See Exhibit 5)

In the processing of all HUD program application submissions, an Equal Opportunity reveiw is required.

The Equal Opportunity roview considers each application for compliance with Title VI of the Civil Hights Act of 1964, Title VIII of the Civil Hights Act of 1968. Executive Order 11063, Executive Order 11246 and the various HUD rules and regulations pertaining to these laws.

An examination of HUD files pertaining to the NDP application from the town of North Hempstead was made in the Hem York Area Office on October 17, 25, 26, 311 The Spinney Hill Hop Application (First Year) from the Town of North Hempstead dated April 12, 1972 was reveived in the N.Y. Area Office April 17, 1972.

The application was assigned to a Field Representative for Urean Renowal for evaluation. The application was processed through various MOD divisions from Lay through August 1972. (See Echicalty 8,8a, 29)

By letter dated September 15, 1972, HUD notified the Town of Horth Hempstead through its Urban Renewal Agency that the Taighborhood Development Program First Year for Spinney Hill had been approved. (See Exhibit 10)

The Equal Opportunity review of the application for the first year found it acceptable and recommended approval. (See Exhibit 11)

On September 12, 1972, representatives of the Spinney Hill community, accompanied by counsel met with HUD program staff. The group voiced apposition to the Spinney Hill housing site because the site would contribute to racial concentration and would not provide freedom of choice of housing opportunity. The group was assured by HUD that approval of the HDP did not automatically mean that the Spinney Hill housing site was approved. It was explained to to the group that any site approval was contingent upon that site meeting site selection criteria which reflects a need for freedom of choice in housing opportunity. The group was also advised that an NDP is an annual arrangement only, and that failure by the applicant to meet stated commitments could result is fund.

being withheld for the second year. (See Exhibits 12 & 13)
The Spinney Hill IDP Application for the second year was received in the N.Y. Area Office on June 27, 1973. The application was assigned to a Field Representative for evaluation. The application was proceeded through various HUD divisions from June to September 1973. (See Exhibits 14 & 15)

By letter dated September 27, 1973 HUD notified the Your of North Hempetead through its Urban Renewal Agency that their Heighborhood Levelogment Program for the second year had been app proved. (See Exhibit 16)

The Equal Opportunity review of the second year application found it acceptable. (See Exhibit 17)

To satisfy the Workable Program prerequite the Town of North Hempstead submitted its Workable Program dated December 15, 1970 for recordification.

The review made by the Equal Opportunity Division of the N.Y. Area Office dated march 11, 1971 found the workable Program unsatisfactory in its EO aspects and recommended that the applicant submit evidence indicating affirmative implementation of its fair housing policy to provide minerity persons displaced by any governmental action in North Heapstead the ability to locate estable of, as well as, within areas of inducrity concentration in the Town. (See Exhibitation) HUD notified the Town of Forth Heapstead that several impediants existed to the recentification of its Workable Program. The Town was informed that the impediments existed in the areas of housing need and fair housing. A meeting was requested by NOD with representatives of the Town to resolve the problems. (See Exhibits 19920 & 21)

By lotter dated June 16, 1971 the Town of North He puted submitted of HUD a duly authenticated resolution of the Town Board agreeing to encourage construction of low and moderate income housing outside of areas of marial concentration. (The Exhibits 22 & 23) By letter dated July 2, 1971 the Town of North Hempsteed was notified by HUD that its Moderate Program had been recertified unit July 1, 1973. (See Exhibits 24 & 25) At present North Hempstead's Morkable Program application for recertification is being processed in the N.Y. Area Office.

Sites for proposed housing outside of areas of racial concentration were proposed to HUD by the Housing Authority of North "empatead early in 1972, (See Exhibits 26,27 &28)

The proposed sites were inspected by HUD. The Equal Opportunity insepction was made January 20, 1)72 and is reported in memo dated March 3, 1972. The EO report covers inspection of three proposed sites. One site was approved, a second site was approved conditionally, a third site was rejected.

The approved site was the Cutter Mill Road site. The site approved conditionally, was Port Washington Boulevard. The EO Division recommended approval of the Port Washington Site on condition that it be developed simultaneously with the Cutter Mill site. The LO report indicated the sites recommended for approval would facilitate full compliance with the provisions of Title VI of the Civil Mights Act of 1/24 and 20 resultations and requirements. (See Exhibits 2)) The sites were also evaluated using nobs Project beloction Criteria. (See Exhibits 30, 31, 832)

HUD notified the Housing Authority of the Town of North Hompstead that two of the proposed housing sites appeared to meet HUD's criteria for accept ability. Those sites were: the Cuttor Mill Road site in Great Rock, add the Fort Washington Boulevard site in Fort Washington. (See Exhibit 33)

The North Hempstead Housing Authority advertized for proposals in the L.I. Press requesting that submissions be received by January 15, 1973, at 4:45P.M. (See Exhibit 3%) line companies submitted proposals. The Housing Authority, aster study and review, of the proposals, recommended two of the companies to NUD for approval. (See Exhibits 35 & 36)

The Cutter Mill Road site in Great Rock becomes the subject of a complaint initiated by the Lakeville Civic Association in Great Rock. The Association's complaint was sent to the office of U.S. Benator Jacob M. Javits. The constant sent the complaint to the N.Y. Area office by letter dated February 12, 1979. (Dee Exhibit 37) HOD's reply to manutor Javits dated February 23, 1973 indicated that energy respect of the project has been and in being given carried consideration. The coolegical exhibits of the project accountriction are currently under study by Area ciffice Staff, with the scalatence of the N.Y. State Department of Environmental Conservation. (See Exhibits 38 & 3))

The Cutter Fill Road site in Chart Reck became the subject of a complaint initiated by the Udall Core Processation Committee, Inc. in Pouglaston, N.Y. The complaint was filed with the Attorney G General, State of New York. By letter dated learnery 15, 1973. The Attorney General indicated that along with the R.T. State Department of Environmental Conservation recommendations would be made to HUD on the futureouse of the property. Included in the correspondence was a list of six alternate sites summitted by the Combined Civic Associations for consideration for housing. (See Exhibit 40) The list of alternate sites were referred to the North Hempsteed Housing Authority. By letter dated June 15, 1973, the Housing Authority responded to HUD on the sites proposed by the c Combined Civic Associations. The Housing Authority did not find any 6f the sites acceptable. (See Exhibit 41)

The current status of the Spinney Hill NDP is - Jobco Developers Inc. of Great Reck are proceeding with their deficience plans. The housing proceed for the site will be under the Hitchell Lama program of N.Y. State. (See Exhibit 42)

B.Findings:

The symbol Mark 18.20 applications for both first and second from the room of north Rempsterd were submitted to the R.Y. Area Office. The Applications were complete and regular. They were processed normally through Hob Divisions, found acceptable and were approved. The Equal Opportunity reviews of these applications found them acceptable and approval was recommended.

In the second year applecation a waiver was granted to the applicant in order to make certain property acquisitions which would become a commercial site would provide revenues to make it possible to rent the proposed housing at low rents.

To fulfill the necessary prerequisite to him, the town of North Rempstead submitted for recertification it. Workable regram which was reviewed and approved after the applicant had corrected deficiencies pointed out in the Lucil Opportunity review.

The files indicate that the application for Yorkable Program recertification was processed normally.

The Equal Opportunity staff in the N.Y. Isom Office was extremely dilgent in exercising its responsibilities under Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, and Executive Order 11009, in the processing of the EDP and Moriable Program applications submitted by the Town of North Hempsteel, and also in the site selection process.

The Program Staff mot with representatives of the Spinney Hill Community who opposed the project on the grounds that the honer-ing would fester regial concentration and would not provide freedom of choice of housing opportunity. HUD assured the group that any housing sate approval was contingent upon that site meeting site selection criteria which would reflect the need for freedom of choice in homoring.

The Department of Housing and Urban Development was aware of, considered, and acted upon Datal Opportunity concerns raised in The Spinney Hill NDP application, Workable Program recertification application, and sites for housing proposed by The Town of North Hempstead.

The Town of North Hempstead was aware of, considered, and acted upon Equal Opportunity considerations in their Spinney Hill HEP Application, their application for recertification of their Morkable Program, and in their selection of sites for low and moderate income housing.

The Housing Authority of Forth Hemostead did propose three sites for housing which were outside of arms of redul concentration.

The sites were inspected by HUD for compliance with HUD site selection criteria. Two of the three site, when found to be acceptable. The Cutter Hill Road site in the whock and the Port Washington Boulevard site in Port Mas abon.

The Cutter will head site is now the sabje and an environmental complaint filed by various community organic, thems.

HUD is preparing an Environmental Tracet Disconfiguration with N.Y. State Department of Environmental Company the ecological effects of the proposed constraints

Jobco Developers Inc. of Great Reck, the second descript, is proceeding with development plans for a smill recent the standing the current litigation in slains a subject.

Violations of Title VI of the Civil Aght. 1950 1960 1961 1961 Will of the Civil Hights Act of 1961 the complaint.

C.Recommendations:
The complaint chould be chosed on the least the complaint chould be chosed on the least the complaint chould be chosed on the least the complaint choice of the civil Rights Act of 1968 and not request

The Town of North Hempab al shelld as the said secontinue to propose nites for housing the first second as concentration to provide in them of a second seco

That one or more of the sites project done to fer a definity concentration when found totoptable, the state of the the Spinney Hill site.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF:

WILLIAM JONES, et al.,

Petitioners,

-against-

Civil Action

No. 73 C 1104

ROBERT C. MEADE, et al.,

Respondents.

FEDERAL RESPONDENTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

EDWARD JOHN BOYD V
United States Attorney
Eastern District of New York
Attorney for Federal Respondents
225 Cadman Plaza East
Brooklyn, New York 11201

HAROLD J. FRIEDMAN Assistant U.S. Attorney

STEPHEN E. MESSINGER (Of Counsel)

# PRELIMINARY STATEMENT

Petitioners, who allege that they are landowners living near the Spinney Hill Neighborhood Development Program (hereinafter "Spinney Hill NDP") area commenced an action on July 24, 1973 against the Town of North Hempstead, (hereinafter "Town) the North Hempstead Urban Renewal Agency - the local planning agency (hereinafter "LPA") and the United States Department of Housing and Urban Development (hereinafter "HUD") claiming that a low and moderate income housing site, located within the Spinney Hill NDP area, will perpetuate racial segregation in violation of the United States Constitution and Title VI of the Civil Rights Act of 1964, 42 U.S.C. \$2000(d)-1 et seq.

By Order to Show Cause dated July 27, 1973 plaintiffs sought a preliminary injunction against the LPA seeking to enjoin the construction of the 100-unit housing site within the Spinney Hill NDP area. This Court reserved decision on the motion for a preliminary injunction and directed petitioners to exhaust their administrative remedies pursuant to 24 C.F.R. \$1.7 et seq. by filing a complaint with HUD so that HUD could investigate petitioners charges. Petitioners filed a complaint with HUD on September 11, 1973 and on or about November 14, 1973. HUD filed its investigative report (annexed to Colon affidavit) in which it concluded that the Spinney Hill site was in compliance with the Civil Rights Acts of 1964 and 1968. Federal respondents now move for summary judgment because HUD's

approval of the funding of the Spinney Hill site is in conformance with the law. The affidavit of Gerald V. Cruise (Exhibit A) previously submitted by Federal respondents in opposition to petitioners' motion for a preliminary injunction and the affidavit of Hector H. Gayle (Exhibit B) previously submitted by the LPA (Second respondents) in opposition to petitioners' motion for a preliminary injunction are resubmitted in support of this motion. In addition, the affidavits of Michael A. Colon (Exhibit C) and Grace Malone (Exhibit D) and submitted in support of this motion.

### STATEMENT OF FACTS

The Spinney Hill NDP area is situated in the unincorporated area of the Town of North Hempstead, County of Nassau, State of New York and the Spinney Hill NDP is being developed by the LPA, an agency of the Town. Within the Spinney Hill NDP is a site where the LPA plans to construct a 100 unit apartment complex consisting of 20 low income units and 80 moderate income units. The land acquisition will in part be funded by HUD and the construction of the building will be funded by the State of New York under the Mitchell-Lama program.

Pursuant to Shannon v. United States Department of

Housing and Urban Development, 436 F.2d 809 (3d Cir. 1970)

HUD was required to develop institutionalized procedures to
enable it to make an informed decision as to whether Federally
financed housing that it was approving was in compliance with
the Housing Act of 1949, as amended, and the Civil Rights Acts
of 1964, 42 U.S.C. \$2000d, et seq. and 1969, 42 U.S.C. \$601,
et seq.

In 1972, HUD promulgated institutionalized procedures for making an informed decision as to whether it has complied with the Housing Act and the Civil Rights Acts when 1t approves two types of Federal funding. The first type concerns situations like Shannon, where there is Federal financial assistance for the actual construction of housing. 37 Fed.

Reg. 203-9 (Jan. 7, 1972). The second type concerns situations such as the case at bar where HUD limits its funding to site

acquisition costs in a NDP project and where there is no HUD subsidy for the actual construction of housing. 24 C.F.R., Part 511.

HUD regulations contained in 24 C.F.R., Part 511 set forth an institutionalized procedure whereby the approval of applications for NDP funding can be made only after there has been a thorough evaluation of each facet of the locality's NDP plan. If an application contains plans for the eventual construction of low and moderate income housing, the application must be examined in light of the potential effect of such housing on the racial concentration of the NLP area.

Pursuant to 24 C.F.R. §511.4 "Program Prerequisities," HUD proceeded to evaluate the Spinney Hill NDP application because it met the 6 threshold requirements contained in this subsection, which requirements are mandated by law. The six threshold requirements relate to: (a) workable programs; (b) local general plan; (c) civil rights; (d) relocating (e) OMB (Office of Management and Budget) requirements; and (f) housing component. HUD officials then evaluated the application on the basis of the criteria set forth in 24 C.F.R. §511.6 et seq. (Cruise affidavit.) Section 511.6 required HUD to consider the Towns plan to expand the supply of low and moderate income housing in a non-discriminatory way, outside areas of concentration of economically disadvantaged minority citizens. HUD rated the Spinney Hill NDP "good" as to the

locality having a realistic plan to expand the supply of such housing outside areas of minority concentration because of the Town resolution stating its official policy to construct housing outside areas of racial concentration. (Resolution of May 13, 1971, attached to Colon affidavit). In addition, the proposals for the Cuttermill and Port Washington Boulevard sites were acceptable to HUD. HUDs requirement that the Town assure HUD that the Town would provide comparable low and moderate income housing outside minority impacted areas has been met. Cuttermill site consisting of 72 low income housing units situated in Great Neck is strong evidence of the Towns commitment to integrated housing throughout North Hempstead. This proposed site is currently being viewed by HUD (Cruise and Gayle affidavits The second site is situated on Port Washington Boulevard in Port Washington and it consists of 28 low income units and it is outside an area of racial concentration.

In part, based on the Town's assurances that low income housing would be constructed outside areas of racial concentration the Spinney Hill NDP application was approved on September 15, 1972. The Spinney Hill site while predominately minority concentrated is nonetheless unlike the large urban ghettos of America. Adjacent to the Spinney Hill site within the Spinney Hill neighborhood is a senior citizen housing complex, the make-up of which is 60% minority and 40% white (Cayle Afficavie).

4. [4]

#### POINT I

SUMMARY JUDGMENT IS A PROPER PROCEDURAL DEVICE TO TFST THE PROPRIETY OF FEDERAL RESPONDENTS APPROVAL OF THE SPINNEY HILL SITE

Federal respondents ask this court to grant it summary judgment as the administrative record supports HUD's findings that the Federal funding of the Spinney Hill housing site is in compliance with the Housing Act, as amended and the Civil Rights Acts of 1964 and 1968.\* Summary judgment can and should be granted to Federal respondents because HUD's selection of the Spinney Hill site as evidenced by the administrative record and supporting affidavits shows that HUD acted properly, that it did not act arbitrarily or capriciously or abuse its discretion in approving the Spinney Hill site for Federal funding and petitioners were given an opportunity to complaint to HUD and be heard.

As to Federal respondents, peti? Its are before this Court seeking judicial review of HUD's initial determination approving the Federal funding of the Spinney Hill site. The relevant statute that applies to the Federal funding in question is 42 U.S.C. §2000d, and it prohibits HUD from funding those projects that discriminate on the basis of race.

<sup>\*</sup> There are two HUD administrative findings. They are (1) the initial approval of the site by HUD and (2) the HUD investigative report in which HUD concluded that there is no basis to petitioners' complaint.

The Civil Rights Act of 1964, 42 U.S.C. §2000d-2, provides for judicial review of the HUD action in funding the Spinney Hill site. The nature of the judicial review would not be a de novo hearing.

While the Hanley v. Kleindenst 471 F.2d 823, 829 (2d Cir. 1972) standard of review of arbitrary, capricious or an abuse of discretion (5 U.S.C. §706(2)(A)) can be said to be controlling in this case, the most beneficial analysis in applying the Hanley standard would be to follow the general outline enunciated in Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, (1971) because Overton Park provides a practical methodology with which to apply the Hanley standard. This methodology is as follows: first, did HUD act within the scope of its authority; second, was the HUD decision based on a consideration of relevant factors and was HUD's decision clear judgment error; and third, did HUD's actions foreclose the necessary procedural requirements. Id. at 415-416. However, under any standard the administrative record supports the conclusion that the Federal funding of the Spinney Hill site is in conformance with the law. At any rate, this court is not empowered to substitute its judgment for that of HUD, Overton Park, supra, at 416.

The <u>Hanley - Overton</u> approach was acknowledged by the .

Court of Appeals in <u>Otero v. New York City Housing Authority</u>

484 F.2d 1122 (2d Cir. 1973) where the court stated that since the N.Y.C. Housing Authority's administration of the Fair Housing Act of 1968, 42 U.S.C. §3601 et seq., was predicated on the Housing Authority's presumed expertise, that the court normally would be "guided by the normal standard of review of abuse of discretion or clear error judgment".\*

In the case at bar, no one disputes that HUD has project selection criteria regulations that enable it to utilize its expertise in analyzing a proposed site, 24 C.F.R. Part 511. Unlike Otero, in the instant case HUD has applied, not suspended its regulations as required by the Civil Rights Act of 1964 to the Spinney Hill site, Shannon supra. The question becomes

<sup>\*</sup> However, since there was an alleged conflict between a Housing Authority regulation that was suspended and the Fair Housing Act of 1968, the Court of Appeals reversed the district courts grant of summary judgment against the Housing Authority because a trial de novo would be needed to determine if there was a conflict between the suspended regulation and the Fair Housing Act. Once the Housing Authority stopped following its own administrative regulations, the presumption that the Housing Authority's actions were based on its expertise was erased, the arbitrary or capricious, an abuse of discretion standard was no longer applicable and the court required a trial de novo.

whether HUD acted arbitrarily, capriciously or abused its discretion in the application of its project selection criteria to the Spinney Hill site. Otero supra, at 1138. Summary judgment is a proper procedural device to test whether Federal respondents acted properly and not arbitrarily, capriciously or abused their discretion in approving the Spinney Hill site for Federal funding.

II. SUMMARY JUDGMENT SHOULD BE GRANTED TO FEDERAL RESPONDENTS AS THE FEDERAL FUNDING OF THE SPINNEY HILL SITE IS IN CONFORMANCE WITH THE LAW

Under any judicial standard of review, the HUD approval of Federal funding for the Spinney Hill site is in conformance with the law. The first consideration in the Overton Park analysis of whether HUD acted within the scope of its authority is not in issue in this case. The second consideration in Overton Park is whether HUD in deciding to fund the Spinney Hill site based it decision on relevant factors and whether HUDs decision was clear error judgment. The pertinent HUD regulations provide an institutionalized method of determining whether a particular site is in conformance with the law. C.F.R. Part 511, et seq. Pursuant to the Civil Rights Act of 1964, 42 U.S.C. \$2000d, et seq. and Shannon the crux of the HUD analysis is whether the Town has a plan to provide and promote integrated housing throughout North Hempstead. is the overriding relevant consideration which HUD contemplated.

The act that the Town will build low income housing outside as well as within areas of racial concentration is sufficient to sustain HUD's approval of the Spinney Hill site.

"There will be instances where a pressing case may be made for the rebuilding of a racial ghetto. We hold only that the agency's judgment must be an informed one; one which weighs the alternatives

and finds that the need for... minority housing at the site in question clearly out weighs the disadvantage of increasing or perpetuating racial concentration." Shannon supra, at 822. Otero supra, at 1134.

See Croskey Street Concerned Citizens v. Romney, 335 F.Supp.

1251 (E.D. Pa. 1971) aff'd 459 F.2d 109 (3d Cir. 1972) where
the court approved 4 structures within a racially impacted area
and only one structure in a white neighborhood because HUD had
considered the substantive issues concerning site selection and
racial concentration. HUD had assurances that the municipality
would build housing outside the racially impacted area.

In the case at bar, HUD has required the Town to balance the Spinney Hill project with comparable housing in non-racially impacted areas outside the NDP area with the net effect being a dispersion of low and moderate income housing on an integrated basis throughout the Town.

In view of HUD's regulations that provide an institutionalized method for making an informed decision on site selection
and HUDs compliance with these regulations, it is clear that
HUD has fulfilled all of its responsibilities under the law.

The HUD finding that there was such a plan for integrating the
Town in the Cuttermill and the Port Washington Boulevard sites
is clear and convincing evidence and it is not clear error
judgment on HUDs part.

The third consideration in Overton Park is whether HUD's

actions foreclose the necessary procedural requirements. It is clear that HUD did follow its own regulations. Furthermore, Petitioners have been afforded due process of law in the HUD investigation and ruling on their complaint. Under HUD regulations, 24 C.F.R. \$1.7 the petitioners were given the opportunity to submit a complaint to HUD and an opportunity to be heard by HUD. Aside from petitioners conclusory allegations, there is no evidence from petitioners or otherwise to support their contention that the Spinney Hill site is in violation of the law.

The facts do not hinge on testimony of those who may be motivated by malice, the credibility or demeanor of witnesses, or persons who have a personal interest in the outcome, Goldberg v. Kelly 397 U.S. 254, 270 (1970). On the contrary, most if not all the facts are found in public records, visible to all and by and large not in dispute and thus, there is no basis for an evidentiary hearing. Burr v. New Rochelle

Municipal Housing Authority, 479 F.2d 1165 (2d Cir. 1973). It is really the conclusions, not the facts, that are in dispute. Given HUDs expertise and ability to investigate Petitioners' complaint, "the complaint is best resolved by independent agency investigation." Burr supra, at 1169. Petitioners have been afforded due process of law.

#### CONCLUSION

Federal respondents are entitled to summary judgment as the administrative record clearly shows that HUD's approval of the Federal funding of the Spinney Hill site is in conformance with the law.

Respectfully submitted,

EDWARD JOHN BOYD V
United States Attorney
Eastern District of New York
Attorney for United States
of America
225 Cadman Plaza East
Brooklyn, New York 11201

HAROLD J. FRIEDMAN
Assistant U.S. Attorney

STEPHEN E. MESSINGER (Of Counsel)

# UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MEM YORK

THE MATTER OF THE APPLICATION OF HORBS.

ROBERT CURRY, MRS. EVELY BROWN, THOMAS.

HARRIS, MRS. ALBERTHA INHISTIL PRS. POST

VILLIS, MRS. SHAPA BROWN, VILLIAM DODY, MRS.

ELIA HARRIS, GEORGE ROSTKY AND GREAT LECT

MATOR CIVIC ASSOCIATION, AND ALL OTHER SIMI
LARLY SITUATED.

DETITIONERS .

PLEADINGS

- AGAINST -

COBFOT C. MEADE JAMES D. MELLS MICHAEL J. MI

FIRST PESPONDENT,

HECTOR H. GAYLE, EXECUTIVE TIRECTOR DEPLACED CECT.
BERNARD CARTLER, CHAIRMAN, INSTANCECT.
BERNARD CLARIFFER CECT.
BERNARD PLANTERS.

SECOND RESPONDENT.

JOHN MAYLOTT AND GECALD V. CRUISE DEPT. OF HOUSING AND HERDAM DEVELOPMENT.

THIRD PESPONDENT.

FIRST. THAT THEIRS IS AN ASSOCIATION FORMED NOT ONLY TO PROTECT THE PROPPIETARY RIGHTS OF THE INDIVIDUAL MEMBERS BUT ALSO TO ENDEAVOR TO SOLVE THE SOCIAL PROBLEMS PREVAILING IN THEIR COMMUNITY.

DESPONDENT ONE THEY ARE WITHOUT KNOWLEDGE AND INFORMATION SUFFICIENT TO FORM A DELIEF.

RESPONDENT\_TWO- THEY ARE WITHOUT KNOWLEDGE AND INFORMATION SUFFICIENT TO FORM A BELIEF.

RESPONDENT THREE DENYS KNOWLEDGE AND INFORMATION SUFFICIENT TO FORM A BELIEF.

SECOND THAT YOUR PETITIONERS, MILLIAM HOURS,

CLARENCE DODIS, MARY HORSE, ROSET CHORY, MPS. EVELYN BROWN, THOMAS HOLMES, MPS. EPPIE JOHNSON, MILLIAM HARRIS, MPS.
ALDERTHA JOHNSON, MPS. ROSE MILLIS, MPS. SHARA RECOVER OF THE GREAT MECK MAYOR CIVIC ASSOCIATION, ARE OWNERS OF REAL PROPERTY WITH BUILDINGS THEREON SITUATED WITHIN THE NEIGHBORHOOD OF SPINNEY MILL, MORTH MEMPSTEAD, COUNTY OF MASSAU. MY, WHERE THE MRBAN RENEWAL HOUSING PROJECT IS INTENDED TO BE BUILT, AND ALL OF WHOM ARE PROPERTY OWNERS, RESIDENTS AND TAX PAYERS PAYING VILLAGE TAXES FOR THE PRIVILEGE OF RESIDING IN AN INCORPORATED VILLAGE OF MANHASSET AND GREAT MECK, MASSAU COUNTY, STATE OF MEM YORK.

RESPONDENT ONE THEY ARE WITHOUT KNOWLEDGE AND INFORMATION SUFFICIENT TO FORM A BELIEF.

PESPONDENT TWO THEY ARE WITHOUT KNOWLEDGE AND INFORMATION SUFFICIENT TO FORM A BELIEF.

PESPONDENT THREE PENYS KNOWLEDGE AND INFORMATION SUFFICIENT TO FORM A RELIEF.

AND AT ALL MATERIAL TIMES HAVE CONSTITUTED THE TOWN TOARD OF THE TOWN OF FORTH HEMPSTEAD. THAT THE SECOND RESPONDENTS CONSTITUTE AND AT ALL MATERIAL TIMES HAVE CONSTITUTED THE LOCAL WRBAN PENEVAL PLANNERS WHICH HAS RESPONSIBILITY TO CARRY OUT LOW-RENT HOUSING AND/OF URBAN PENEVAL ACTIVITIES IN THE VILLAGE OF MANHASSET AND GREAT MECK. COUNTY OF MASSAU AND DEVELOPS SUBSTANTIAL PROGRAM POLICIES TO BE USED AS GUIDELINES IN CARRYING OUT THE LOCAL HOUSING OR RENEVAL PROGRAM. THAT THE THIRD RESPONDENTS CONSTITUTE AND AT ALL MATERIAL TIMES HAVE CONSTITUTED THE DEPARTMENT OF HOUSING AND MERCAL TIMES HAVE CONSTITUTED THE DEPARTMENT OF HOUSING AND MERCAL TIMES HAVE CONSTITUTED THE DEPARTMENT OF HOUSING AND MERCAL TO EXERCISE GENERAL SUPERVISION OVER 1.75 DUILDING OF LOW-RENT HOUSING.

PESPONDENI ONE: ADMITS TICHAEL J. TULLY IS A

MEMBER OF THE TOWN BOARD OF THE TOWN OF MORTH HEMPSTEAD. DENYS ALL OTHER ALLEGATIONS.

RESPONDENT IWO. ADMITS "ICHAEL J. TULLY IS A MEMBER OF THE TOWN BOARD OF THE TOWN OF WORTH MEMPSTEAD. DENYS ALL OTHER ALLEGATIONS.

PESPONDENT THREE DENYS INFORMATION SUFFICIENT TO FORM A BELIEF AS TO THE FIRST TWO SENTENCES. BENYS ALLEGATIONS CONTAINED IN THE LAST TWO SENTENCES OF PAPA GRAPH THREE. ALLEGES THAT THE NAMED THIRD RESPONDENTS ARE EMPLOYEES OF THE SECRETARY OF THE HOUSING AND PREAM DEVELOPMENT OF THE UNITED STATES.

DAY OF "AY. 1072, PROPOSED TO BUILD EIGHT TO TEN MILLION DOLLAR BROAN SENEWAL BOUSING SPOJECT FOR SPINNEY FILL IN THE VILLAGE OF "ANHASSET AND GREAT NECK COUNTY OF GASSAU. STATE OF BEY YORK.

PESPONDENT TWO DENYS
RESPONDENT THREE DENYS

FIETH THAT THE SECOND RESPONDENT IN THEIR PROPOSAL FOR THE SAID PROJECT DELIFERATELY SELECTED ONLY ONE SITE IN A PREDOMINANTLY PLACK AREA OF "ANHASSET DESPITE THE FACT THAT A SUPVEY PREVIOUSLY TAKEN BY THE TOWN INDICATED THAT THE VAST MAJORITY OF THE TENANTS APPLYING FOR THE NEW HOUSING ARE PLACK. However, IT was said in CPOT VS. 82071, 332 F Supp 330 (1971)

FOR BETTER OR WORSE BOTH BY LEGISLATIVE ACT AND JUDICIAL DECISION, THIS NATIOM IS COMMITTED TO A POLICY OF BALANCED AND DISPERSED PUBLIC HOUSING. AMONG OTHER THINGS, THIS REFLECTS A RECOGNITION THAT IN THE AREA OF PUBLIC HOUSING LOCAL AUTHORITIES CAN NO MORE CONFINE LOW-INCOME PLACKS TO A COMPACTED AND CONCENTRATED AREA THAN THEY CAN CONFINE THEIR CHILDREN TO SEGREGATED SCHOOLS,

THIS POSITION WAS TAKEN EVEN MORE STRONGLY AND VEHEMENTLY IN SHAHNON VS. UNITED STATES DEPT. OF HOUSING AND URBAN DEVELOPMENT, 436 F 2D 320.

THE CHOICE OF LOCATION OF A GIVEN PROJECT COULD HAVE THE EFFECT OF SUBJECTING PERSONS TO DISCRIMINATION BECAUSE OF THEIR RACE OR HAVE THE EFFECT OF DEFEATING OR SUBSTANTIALLY IMPAIRING ACCOMPLISHMENTS OF THE OBJECTIVES OF THE PROGRAM OR ACTIVITY AS RESPECTS
PERSONS OF A PARTICULAR RACE. THAT EFFECT COULD ARISE BY VIRTUE OF THE UNDUE CONCENTRATION OF PERSONS OF A GIVEN RACE OR SOCIQ ECONOMIC GROUP IN A GIVEN NEIGHBOR-THAT EFFECT COULD BE FELT NOT ONLY BY OCCUPANTS OF RENT SUPPLEMENT HOUSING AND LOW COST HOUSING, BUT BY OCCUPANTS OF OWNER OCCUPIED DWELLINGS, MERCHANTS AND INSTITUTIONS IN THE NEIGHBORHOOD.
POSSIBLY BEFORE 1964 THE ADMINISTRATION OF THE FEDERAL HOUSING PROGRAMS COULD BY CONCENTRATING ON LAND USE CONTROLS. FUILDING CODE ENFORCEMENT, AND PHYSICAL CONDITIONS OF BUILDINGS, REMAIN BLIND TO THE VERY REAL EFFECT THAT RACIAL CONCENTRATION HAS HAD IN THE DEVELOPMENT OF URBAN BLIGHT, TODAY SUCH COLOR BLINDNESS IS IMPERMISSIBLE. INCREASE OR MAINTENANCE OF RACIAL CONCENTRATION IS PRIMA FACIE LIKELY TO LEAD TO URBAN BLIGHT AND IS PRIMA FACIE AT VARIANCE WITH MATIONAL HOUSING POLICY.

SESPONDENT DNE DENYS

RESPONDENT TWO: PENYS

PESPONDENT THREE DENYS

SIXTH: That in pursuance of the said proposal and in accordance with the Housing Act of 1936, a public meeting was held on the 10th day of May, 1972, to explain to the residents in the locality of the proposed project site the said proposal and to hear any objections to the said proposal.

RESPONDENT ONE ADMITS PORTION OF PARAGRAPH SIX WHICH ALLEGES PUBLIC HEARING HELD ON MAY 10, 1972. Denys EACH AND EVERY OTHER ALLEGATION.

RESPONDENT TWO: ADMITS PUBLIC HEARING HELD ON

MAY 10, 1972. DENYS EACH AND EVERY OTHER ALLEGATION.

RESPONDENT THREE: DENYS KNOWLEDGE AND INFORMATION SUFFICIENT TO FORM A BELIEF.

SEVENTH: THAT THE PETITIONERS, THROUGH THEIR PRESIDENT IN THE NAME OF MILLIAM JONES AND THEIR ATTORNEY, ROBERT RIVERS, ENDEAVORED TO BRING TO THE ATTENTION OF THE SECOND RESPONDENTS AT THE SAID PUBLIC MEETING THE COMSEQUENCE AND THE LEGAL IMPLICATIONS OF NOT ONLY THEIR FAILURE OF RECOMMENDING AN ALTERNATE SITE, BUT ALSO OF CONCENTRATING A LARGE NUMBER OF BLACK PEOPLE AT ONE MEIGHBORHOOD.

RESPONDENT ONE: DENYS

RESPONDENT\_INO DENYS

PESPONDENT THREE: DENYS KNOWLEDGE AND INFORMATION SUFFICIENT TO FORM A BELIEF.

EIGHTH: THAT THE PETITIONERS AT THE SAID PUBLIC MEETING MADE IT PERFECTLY CLEAR THAT THEY ACKNOWLEDGE THE CRITICAL NEED FOR HOUSING AND HOUSING DEVELOPMENTS NOT ONLY FOR THE TOWN OF TORTH HEMPSTEAD, BUT FOR THE ENTIRE COUNTY OF MASSAU. FURTHER, THEY RECOGNISE THAT THIS NEED EXISTS NOT ONLY FOR MODERATE AND MIDDLE INCOME HOUSING BUT FOR LOW INCOME HOUSING. IT IS ALSO UNDENIED THAT SITES FOR THE PROJECTS WHICH HAVE TO BE CONSTRUCTED WERE CHOSEN PRIMARILY TO FURTHER THE PRAISE WORTHY AND URGENT GOALS OF LOW COST HOUSING AND URBAN RENEWAL. MEVERTHELESS, A DELIBERATE POLICY TO SEPARATE THE PACES CANNOT BE JUSTIFIED BY THE GOOD INTENTIONS WITH WHICH OTHER LAUDABLE GOALS ARE PURSUED."

296 F SUPP 214, DOROTHY GAUTREAX VS. CHICAGO HOUSING

RESPONDENT THE DENYS

RESPONDENT TWO: DENYS

RESPONDENT THREE: DENYS

HILTH: THAT THE PETITIONERS SUPPORT HOUSING, HOWEVER, THEY ARE OPPOSED TO THE CURRENT SPINNEY HILL MRBAN

RENEWAL PROJECT ON THE GROUNDS THAT AS PRESENTLY CONSTITUTED.

IT REPRESENTS AN EXPENDITURE OF FEDERAL FUNDS FOR THE PURPOSE OF BRINGING ABOUT RACIAL CONCENTRATION CONTRARY TO THE FEDERAL GUIDELINES AND CONTRARY TO THE ENLIGHTENED CONCEPT OF SCATTER SITE DWELLINGS. THAT ON ITS FACE AS PRESENTLY CONSTITUTED. THE PLAN IS PRIMA FACIE. AT VARIANCE WITH THE MATIONAL MOUSING POLICY AND WILL BRING ABOUT AN INCREASE IN RACIAL SEGREGATION. IN BUPTON VS. MILMIGIAL PAPPING AUTHORITY. 365 M.S. 715. IT WAS REITERATED THAT IT IS OF NO CONSOLATION TO AN INDIVIDUAL DENIED THE EQUAL PROTECTION OF THE LAWS THAT IT WAS DONE IN GOOD FAITH.

RESPONDENT ME. DENYS

PESPONDENT TWO LENYS

PESPONDENT TIBES PENYS

TENTILE THAT THE PROPOSED PROJECT IS IN DIDECT CONTRAVENTION OF SECTION 601 OF THE CIVIL DIGHTS ACT OF 1964. TITLE VI. WHICH PROVIDES. TO PERSON IN THE UNITED STATES SHALL ON THE GROUNDS OF RACE, COLOR, OR NATIONAL ORIGIN, BE EXCLUDED FROM PARTICIPATING IN, BE DENIED THE BENEFIT OF OR BE SUBJECTED TO DISCRIMINATION UNDER ANY PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE. THE LOCATION OF THE PROJECT WITH ADOUT 70% BLACK OCCUPANCY IN AN AREA WITH A LARGE BLACK POPULATION WILL IMPEDE A WORKABLE PROGRAM FOR COMMUNITY IMPROVEMENT IN CONFORMITY WITH THE CIVIL BIGHTS ACT OF 1964 AND 1963.

PESPONDENT THE PENYS

PESPONDENT TWO PENYS

RESPONDENT THREE DENYS

ELEVENTE: THAT THE SECOND RESPONDENTS HAVE NOT MADE ANY ATTEMPT TO ACQUIRE NON SEGREGATED SITES WITHIN THE TOWN OF MORTH MEMPSTEAD FOR THE PURPOSES OF BUILDING LOW AND MODERATE INCOME HOUSING OF AN EQUAL POTENTIAL AS THAT WHICH IS NOW PROPOSED FOR SPINNEY HILL.

RESPONDENT ONE: DENYS

SECOND RESPONDENT DENYS

GESPONDENT THREE DENYS

TWELETH: THAT THE FIRST RESPONDENTS, ON THE 17TH DAY OF MAY, 1972, APPROVED THE PROJECT KNOWING THAT SUCH SITE WAS NOT OPTIMAL, AND THAT IT IS IN DIRECT COMTRAVENTION OF THE FEDERAL GUIDELINES AND THE CIVIL DIGHTS OF 1904 AND CONTRARY TO THE ENLIGHTENED CONCEPT OF SCATTER SITE DWELLINGS.

PESPONDENT THE PENYS

PESPONDENT TWO L'ENYS

RESPONDENT THREE DENYS

THE THAT THE THIRD RESPONDENT ALSO APPROVED AND INTEND TO FUND THE SAID PROJECT. THE THIRD RESPONDENT KNOWLINGLY ACQUIESED IN DISCRIMINATORY HOUSING PROGRAM AND HAS THEREFORE VIOLATED DUE PROCESS CLAUSE OF THE SIFTH AMENDMENT OR SECTION 601 OF THE SIVIL RIGHTS ACT. (SUPRA)

SESPONDENT THE DENYS

RESPONDENT THO PENYS

RESPONDENT THREE : TENYS

HARM THE ONE-FAMILY CHARACTER OF THE NEIGHPORHOOD HOUSES AND BRING A CONCENTRATION OF SO CALLED MINORITY HOUSING TO THE AREA.

RESPONDENT THE DENYS

RESPONDENT TWO DENYS

ESPONDENT THREE DENYS

PROPRIETARY INTEREST OF THE PETITIONERS, AND TO THE CHARACTER OF THE NEIGHBORHOOD AND WILL BRING ABOUT AN UNCONCIONABLE BURDEN UPON THE ALREADY OVER TAXED ANHASSET SCHOOL DISTRICT, THEREBY CAUSING AN ADDITIONAL TAX BURDEN FOR THE PETITIONERS.

PESPONDEUT ME: PENYS

PESPONDENT THO DENYS

THIRD RESPONDENT DENYS

SIXTELITH: THAT UPON THE FAILUPE OF THE RESPONDENTS TO MEET THE PREREQUISITE IT IS THE DETERMINATION OF THE PETITIONERS TO TAKE EVERY STEP LEGALLY NECESSARY TO STOP THE COLONIZATION OF CLACK PEOPLE.

ELEST DESPONDENT CENYS

CECOND RESPONDENT CENYS

THIRD RESPONDENT ENYS

# DEFE ISES

## FIRST RESPONDENT

- 1) PETITION FAILS TO STATE A CAUSE OF ACTION.
  - 2) PETITIONERS DO NOT HAVE STANDING.
  - 3) PETITIONERS ARE GUILTY OF LATCHES
- 7) PETITION MUST BE CONSTRUED TO RE AN ORTICLE 70 PROCEEDING UNDER THE NEW YORK STATE CIVIL PRACTICE LAW AND PULES AND IS DARRED BY THE FOUR MONTH STATUTE.
- 5) PETITIONERS FAILED TO COMPLY WITH PROVISIONS OF TITLE 42. U.S. Code 2000 AND 27 FEDERAL PEGULATIONS 11527. ACTION PROPERLY COMMENCED, NOT TIMELY FILED.
- 6) PARTIES NAMED AS FIRST PESPONDENTS ARE NOT PROPER PARTIES

# SECOND DESPITE IT

- 1) COMPLAINT FAILED TO STATE A CAUSE OF ACTION
- 2) PETITIONERS DO NOT HAVE STANDING
- 3) PETITIONERS ARE GUILTY OF LATCHES.
- 4) TUST BE CONSTRUED AS AN ARTICLE 73 UNDER THE NEW YORK STATE CIVIL PRACTICE LAW AND RULES AND IS PARRED BY THE FOUR MONTH STATUTE.
- 5) PETITIONERS FAILED TO TIMELY COMPLY WITH THE TITLE 42, U.S. Cope 2000 and 27 Federal Pegulations 11527, 24 CFR. Section 1.7 21.11.

# THIPD RESPONDENT

- 1) PETITIONERS FAILED TO STATE A CLAIM
- 2) PETITIONERS DO NOT HAVE STANDING TO MAINTAIN AN ACTION
  - 3) PETITIONEPS ARE BARRED BY LATCHES
- 4) THE COURT IS WITHOUT JURISDICTION OVER THE SUBJECT MATTER
- 5) THIS IS A SUIT AGAINST THE UNITED STATES TO WHICH THE UNITED STATES HAS MOT CONSENTED.

AS A PARTIAL DEFF FOR

THE MAYLOTT AND GERALD V. CONTST ARE NOT PROPER RESPONDENTS AND THE ACTION AS TO THEM SHOULD BE DISMISSED.

YOURS ETC.

ATTORNEY FOR PETITIONERS
PETICE & P.O. ADDRESS
PETITIONERS
PETITIO DICHARI JULI JULIOSE TOWN ATTORNEY FOR THE TOWN OF WORTH MEMPSTEAD ATTORNEY FOR FIRST RESPONDENTS CANHASSET Y 11030

PESSA & WARPI ATTORNEYS FOR SECOND RESPONDENTS
33 MAIN STREET
PORT MASHINGTON MY 11.357

U.S. ATTORNEY 225 CADMAN PLAZA FAST GROOKLYN, JEW YORK

Delet:

STATE OF NEW YORK, COUNTY OF

#### AFFIRMATION BY ATTORNEY

The undersigned, an attorney edmitted to practice in the courts of New York State, states: that deponent is

the attorney(s) of record for in the within action; that deponent has read the foregoing and knows the contents thereof; that the same are true to deponent's own knowledge, except as to the matters therein

VEELDWALL OF SEDVICE BY WILL

CHATE OF TEN YOURS

FLLET SPACECT. PEING DULY SHOPN, DEPOSES AND SAYS. THAT DEPONENT IS OVER THE AGE OF 12 YEARS, IS NOT A PARTY TO THE ACTION AND RESIDES AT MANTAGE. TY.

THAT ON THE 7TH DAY OF MAY: 1974. THE DEPONENT SERVED THE WITHIN MARKED PLEADINGS UPON:

DICHARD OSTERVIORE 221 PLANDOME FOAD "ANHASSET IV BESSA # HAPPI 33 AJM STPEET CORT MASHINGTON TO

POOKLYN, Y

THE WITHIM ACTION AT THE ADDRESS DESIGNATED BY SAID ATTORNEYS BY DEPOSITING THE SAME IN A POSTPAID "TAPPER IN AN OFFICIAL DEPOSITORY OF THE UNITED STATES "OST "FEICE IN THE STATE OF "FEY YORK.

SMORN TO BEFORE ME THIS 7TH DAY OF MAY 1974.

# PARTED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF HEW YORK

IN THE MATTER OF THE APPLICATION OF:

JILLIAN JONES, CLARENCE BERIS, MARY HOBBS,

BOBERT CURRY, MAS. EVELYN BROWN, THO AS

HOLDES, MRS. EPPIE JOHNSON, MILLIAN MARKIS,

AS. ALBERTHA IDANSON, MES. ROSE MILLIS,

MRS. SHARA BROWN, MILLIAN DORY, MRS. ELLA

MARRIS, DEORGE HOSTRY and CREAT MECA MANOR

CIVIC ASSOCIATION, and all other similarly

situated.

Petitioners,

RO. 73 C 11 14

#### \*against\*

TULLY, JR., JEGROE C. SOOS, FELIX A. ANDREWS, JOHN F. COUNTLL, ARTHOR A. PIHONAN, WILLIAM TO KYAM, JR., TOWN OF NORTH HE PSTEAD.

First Raspondents.

DECTOR R. CAYLE, Executive Eirector, BERNARD BARTLER, Chairman, JOSEPH CECI, LR. CORTIS KENDEICH, LUCAL JUBAN RENEMAL PLANNERS.

Second Despundents.

JOHN MAYLOTT and GERALS V. CRUISE, DEPT. OF MODELING AND GROAN DEVELOPMENT.

Third Respondents.

PETITIONERS! DECORAGEOR OF LAW

IN OPPOSITION TO FIRST AND SECOND RESPONDENTS! JOTION TO DISCISS PETITIONERS! COMPLAINT

TO: RICHARD OSTERNBORF 220 Plandome Road Hannasset, MY, 11:39 Toun Attorney, Atty for First Respondents

Attys for Second Respondents
33 Main Street
Port Washington, WY, 11050

0.S. ATTORHEY Harold Friedman Atty for Third Respondents 225 Cadman Plaza East Brooklyn, MY Submitted by:

ROBERT RIVERS
Attorney for Petitioners
Office & P.O. Address
287 Post Avenue
Testbury, NY 11599
(516) 332-3555

# EDR-THE-EASTERN DISTRICT OF NEW YORK

IN THE GATTER OF THE APPLICATION OF: WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS, GUDERT CURRY, MRS. EVELYA BROWN, THUMAS HOLES, MPS. EPPIE JOHRSON, MILLIAM BARRIS, MRS. ALBERTHA JOHRSON, MRS. 6 51 MILLIS, MPS. SHARA MRCUN, HELTAL BROWN, MRS. ELLA MARKIS, MEGREE MOSTRY EMBELS FLIAMANTALS, MEGREE MOSTRY EMBELS FLIAMANTALS, MEGREE MOSTRY EMBELS SIMILARLY SITUATED,

6171L ACTION 10. 73 C 1154

leticioners.

#### -against-

ACRERT C. CEAGE, JAMES P. WELLS, CICHARL J. T. LLY, J., GEORGE C. SOUS, FELLY C. AGGREWS, JOHN F. MCDON'LO, AFTHER . 2183HAR, WILLIAM OF COUNTY HE ISTEAM.

wiret Pastrade sto.

SECTOR S. CAYLE, Executive Director, CERNARY CARTLER, C. airman, JOSEPH CECI, OF. CORTIS KENDRICK, LOCAL DEDAN PRHEHAL STARDERS,

Second Respondents,

JOHN MAYLETT and PERALD V. CAUISE, DEPT. OF ROUSING AND ERLAN DEVELOPMENT.

Trifed was, andacts,

PETITIONERS' "EMCRANDOR OF LAW IN OPPOSITION TO FIRST AND SECOND FESTONDERTS' ACTION TO DISHISS PETITIONERS' COMPLAINT

TO: CICHARD OSTERNBORF 220 Plandone Road ranhasset, NY, 11930 Tour Attorney, Atty for First Respondents

> NESSA & MAPPI Attys for Second Respondents 33 Main Street Port Mashington, NY, 11950

Larold Friedman
Atty for Third Respondents
225 Cadman Plaza Last
brooklyn. NY

Submitted By:

Attorn y for Petitioners Office & P.O. Address 287 Post Avenue Westbury, NY 11693 (516) 333-3555

### 

## ELTITICALKO ' METI PO IN POSECUEL DY ELECTRONICAL DE CONTRE DE L'UNES

It is contracted a ter New Country to the action of as not timely come or and a reform toollar a right took. It has a work of a reformable action of the action of the contract of a reference and to prove the first constant of a restrict of a result of the contract of th

"Traditionally and for good reasons, socially acasures of acutella relief. Such statutes have been broken upon the chuit, sold for the light than may such the control of acutellary that is decisive for the characters intervention, hardly sold the character the claim of the characters and the control of the characters and the characters as a control of the characters as a control of the characters against referedant upfair."

Socratially, it must be a served that the question of the check of that case had in a cunction of the circumstances of that case had in a sunction rimarily addressed to the discretion of the trial court.

Alberta v. PARAMIS. Co., 362 (18. 1., 20. 1861).

remote and where no projudice to the resucudents cas consider from more casuage of time, there should be no art to the reliable. The equitable document of lacess in actually designed to copyre fairness to defendants. Such describe inducted dustice by the reventing surmises compared to revival of claims that have been allowed about of and atmesses wisap, eared.

In the instant, retitioners had not inexcusably show on their rights and there had not been any are-inside to the respondents. It is therefore ludicrous for the respondents to assert that patitioners did not commence this action timely. It is, however, the sunsission of the petitioners that this action is based on Federally created right for which the sole remode is equity and that statute of limitations harring action at lev is inapplicable.

### FOINT TO

# THE EMPLICABLE STATUTE OF LIGHTATION AND LANGE YEARS

The respondents aroun that the applicable scatter of limitation under new York law has run. Now, assuming that the equitable document of laches does not apply in this instant case, it lowever ecomos o visus that there are two (2) separate issues which must be resolved in this case.

first, it bust to determined what statute of limitation applies to the facts alleged in the settition. Second, it must be determined which dates are the key ones for the statute of limitations; that is when the statute of statute of statute segin to run.

not provide for a national statute of limitations. Lunsequently, it is necessary to examine the various statutes
of limitations in the appropriate state, in this instance,
len York State, and apply the statute which limits actions
absticitation to the one in the instant petition.

An examination of the various statutes of limitations dutc.ly narrows the possible statutes to two, namely:

e. York Civil Practice Act Section 4s (2) water revides:

"The following action must be consened to in six (i) years after the cause of action has accrued. . . . 2. An action to recover upon a limiting created y statute except menalty or forfulure."

The pariot for accion:

"to recover usual a liquility created " a statute has sportened to three"

effective Section 1. Told v C.P.L.R. Section 214 (2).

C.P.L.R. Section 217 provides:

"unless a shorter time is provided in the law authorizing the proceeding, a proceeding against a lody or officer must be commenced mitch four months after the daternination to be reviewed becomes final and linging. . "

Tius, in determining the applicable statute of limitation powerning the Divil hights not, it has stated in the leading case of <u>SAAR v. 30ARD OF EDUCATION</u>, 31 of 2d Co as follows:

"He need act consider unether the four months period provided in Section 1200 with respect to Article 7a proceeding is the kind of state statute of limitations to union Federal courts will look in the assence of a Federal statuate or whether, if it were, it should be rejected, on the ground that it would substantially impair the Federal

rive sugget to a aforcas.

(\*\*Lotell v. 1. A \*\* 0.00 0.00 1

[S cir 1.47]: 5.915 v.

\*\*Lotell 1.42 0.00 0.00 0.00 0.00 0.00

(S cir 1.47): 5.915 v.

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"the applicable period is six years."

It was therefore been concluded by decided cases that the six year eriod under the former New York Civil Practic yet as modified by C.P.L.B. 214 (2) to three years applies in this case.

in view, therefore, of the decided cases reviewing the applicable statute of limitation governing Civil sights Acts, it is untenable for the respondents to content that the applicable statute of limitations under now York law is four (4) months. Even if the statute capable to run at the date stated by the respondent, it still cannot be concluded that the petitioners are farred by the statute of limitations. This action has commenced circly by the petitioners since they have site in the three (3) year seriod revised by the Rew York civil Practicates.

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us it sust an acted that petitioners are annually consists four section qualities review of the initial conservation as contended. If Fourtal reproduction. Petitie are rought this action asicall to assert their solutional along the dater are civil single asserts.

multic administrative agency to use Foderal funds to promose racial segregation. The question sefore this bount
is not unether the initial determination of how is arbitrar, or conficious, but mether the funding of the federal
respondents of the Spinney will project represents an exenditure of Federal funds for the purpose of princing
model racial segregation contrary to the divil finants acts.
Federal quid-lines and the enliqueened concert of scatter
with unalling. It is the submission of the petitioners
that the location of the project with about 70% place accurancy in an area with large black population is clearly
an attempt to promote racial segregation contrary to the
civil bights Acts.

It is apparent from the record that respondents, esdecially Federal respondents, failed to comply with the
duty im, osca by the Civil Rights Acts of 1984 and 1988 not
to termit Federal funds in promoting segregation. Congressional command should not te taken lightly by respondents.

determination of the edgest law-marker can of this edition of the edgest law-marker can of this edition that described described requires small not a corresponding. I also the corresponding the commetted with the review often for a like edge of the for a coaring-marker care arriver a function to the demonstrate core managers arriver a unreason of the edge of the content that the falled the edge that it is a full case. It is evident that the investigation of the commence of

It is the contention of the retitioners that Section 7:0 (1) (1) of the Cuministrative Procedure Act applies and that there might be a de nove hearing to determine if 1:0's all royal of the Sciency hill Project was carranted a facts.

It is well established that a finding of fact by an audicistrative agency water moes to the jurisdication of

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"a ent e legisleture act. sirectly, its action is surfact to judicial soruti. And determination . y any declaration, or legislative finding. Legislative declaration of finding is decessarily subject to independent subject to independent subject to independent subject to independent jurishable of the courts of our deat jurishable to the surfact that the surface independent indicates the surfact of fact as a second trained of the legislation of the court indicates the surfact of fact as a second trained of the court are independent. It is to class to use

rights at the mercy of naminalistrative officials and corioutly to impair the condition in erent in our indicial safetuards."

In the Case at ear, it is a parent that had some are reval of the Science will Project in airs the enterity-closel rights of the retitioners and standfure the fielding of face by the are not conclusive and must be tried the court de novo.

### LOGEL SIU.

It is respectfully submitted that the notitioners consensed their action within the time provided of the statute and resides, this is an action which affects the constitutional rights of the patitioners and therefore the findings of facts of the are not conclusive and material or trick of novo. The relief requested is the respondents should be desired to all respects.

Respectfully Subsideted by:

ROULRT RIVERS
Attorney for Petitioners
Office & P.). /dcress
257 Post Avenue
Westhury, N.Y. 11907
(61() 333-3563

#### UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

WILLIAM JCNES, et al.,

Petitioners,

-------

No. 73C 1104

-against-

MICHAEL J. TULLY, JR., et al.,

AFFIDAVIT OF RELATIONSHIP BY PUTITIONERS BETWEEN SPINNEY HILL AND OTHER SIGHTS

Respondents.

STATE OF NEW YORK ) : 89: COUNTY OF NASSAU )

The following is the counter findings of distance between the proposed site and current public housing in the Hunhasset-Great Neck area in the above-captioned action:

- 1. That the distance from the spinney Hill Housing Project, the subject of this suit, to hand Hill Hous; it is adjacent.
- 2. That the distance from spinner Hill Founity Project, the subject of this suit, so the maternill site is 3 miles.
- 3. That the distance from the Spinney Hill ousing Project, the subject of this suit, to the harbor Road site is smiles.
- 4. That the distance from the spinney Hill wousing Project, the subject of this suit, to the Senior Citizens! Housing at Spinney Hill is 6/10 of a mile.
- Project, the subject of this suit, to the Cow Bay Housing
  Project on Harbor Road in Fort Washington is 5 miles, and
  this section is the same as paragraph number 3 of the proposed
  stipulation by respondents.

6. That the distance from the Port Washington Boulevard site to the Watermill site is 8 miles.

That a map of the Town of North Hempstead is annexed to this affidevit and the sites above referred to are numbered on said map as follows:

- Pond Hill Homes (Town of North Hempstead
   low income housing, majority minority residents.)
- 2. Watermill Site (No one living here, factory area.)
- 3. Port Washington Boulevard Site (Majority minority residents, is adjacent to the Town of North Hempstead low income housing Cow Bay.)
- 4. Senior Citizens Housing (6/10 mile from spinney Hill.)
- 5. Cow May Housing Project (Majority minoricy residents, is adjacent to the Port Washington Boulevard site.)
  - 6. Proposed Spinney Hill Housing Excject.

Dated: Westbury, New York hay 15, 1974

SWEEN TO GROFE PUNALITY OF PERJURY:

ROBERT KIVERS

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK			
WILLIAM JONES, et al.,			
	-aga	Petitioners,	CIVIL ACTION
MICHAEL J. TULLY	Y, JR	R., et al.,	No. 73C 1104
Respondents.			
х			
	IT IS	S HEREBY STIPULATED A	ND AGREED by and
between the attorneys for the respective parties in the above captioned			
action as follows:			
	1.	That the distance from the	Spinney Hill Housing
Project, the subject of this suit, to Pond Hill Road is 800 feet.			
	2.	That the distance from the	Spinney Hill Housing
Project, the subject of this suit, to the Watermill Site is 2 miles.			
	3.	That the distance from the	, 2
Project, the subject of this suit, to the Port Washington Boulevard Site is			
5 miles.			
•	4.	That the distance from the	Spinney Hill Housing
Project, the subject of this suit, to the Senior Citizens Housing at .			
Spinney Hill is 1/4 of a mile.			
<b>9</b> /03	5.	That the distance from the	Spinney Hill Housing
		nis suit, to the Cow Bay Hou	ising Project on
Harbor Road in Port Washington is 5-1/2 miles.  6. That the distance from the Port Washington			
	6.	That the distance from the	Port Washington
Boyleyard Site to the Watermill Site is 7 miles.			

Sanilea

That a Map of the Town of North Hempstead is annexed to this stipulation and the sites above referred to are numbered on said Map as follows:

- Pond Hill Homes. Town of Horla / Angeled Ten
- Watermill Site.

- 5. Cow Bay Housing Project
- 6. Proposed Spinney Hill Housing Project.

Dated: Manhasset, New York May 15, 1974.

Attorney for Petitioners

Attorney for First Respondents

Attorney for Third Respondents

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

WILLIAM JONES, et al.,

Petitioners,

-against-

MICHAEL J. TULLY, JR., et al.,

Respondents.

CIVIL ACTION

No. 73C 1104

STATE OF NEW YORK)

COUNTY OF NASSAU )

RALPH A. NAPPI, an attorney-at-law, hereby affirms under the penalties of perjury:

- That I am the attorney for the second respondent in the above action.
- 2. That on May 14, 1974 at approximately 4 P. M. affirmant received a telephone call from Harold Friedman, Assistant United States Attorney, attorney for the third respondent herein. Mr. Friedman advised affirmant that the court requested a stipulation signed by the attorneys in the above action setting forth the distances from the proposed Spinney Hill Project to the Water Mill site, the Port Washington Boulevard site, the Pond Hill Road project, the Cow Bay Housing Project, and the Senior Citizen Housing at Spinney Hill. I immediately contacted the attorney for the petitioners, Robert Rivers, and advised his secretary of this request. His secretary, apparently having discussed this with Mr. Rivers while I was on the telephone, advised me that Mr. Rivers would meet me at Town Hall. Manhasset, New York, on the following morning, May 15, at 9 A. M. I appeared at Town Hall at 9 A. M. with the attorneys for the first respondent and prepared the said stipulation. Mr. Rivers did not appear at Town Hall.

1

a law school studen, appeared with two of the petitioners, Mrs. Brown and Mr. Jones. They would not sign the stipulation, and I advised Mr. Corbin that the first, second, and third respondents would sign the stipulation and submit the same to the court on this date. Mr. Corbin is being given a copy of this affirmation and of the stipulation which we are submitting to the court. The stipulation is, to the best of my knowledge and belief, accurate as to the distances set forth therein since said information was obtained from an official map of the Town.

 I advised Mr. Corbin that if he wished to submit his own statement to the court that he should do so immediately.

Dated: Manhasset, New York May 15, 1974

RALPH A. NAPPI

UNITED STATES DISTRICT COURT FASTERN DISTRICT OF HEW YORK

IN THE MATTER OF THE APPLICATION OF:
WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS,
ROBERT CURRY, MRS. EVELYN BROWN,
THOMAS HOLMES, MRS. EPPIE JOHNSON, WILLIAM
HARRIS, MRS. ALBERTHA JOHNSON, MRS. ROSE WILLIS,
MRS. SHARA BROWN, WILLIAM DORY, MRS. ELLA HARRIS,
GEORGE ROSTKY and GREAT NECK MANOR CIVIC ASSOC.,
and all other similarly situated,

73C

Petitioners,

AFFI

-against-

OPPO: FOR S

ROBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., GEORGE C. SOOS, FELIX G. ANDREWS, JOHN F. McDONALD, ARTHUR G. BINGHAM, WILLIAM H. RYAN, JR., TOWN OF NORTH HEMPSTEAD,

First Respondent,

HECTOR H. GAYLE, Executive Director, BERNARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK, LOCAL URBAN RENEWAL PLANNERS,

Second Respondent,

JOHN MAYLOTT and GERALD V. CRUISE, DEPT. OF HOUSING AND URBAN DEVELOPMENT.

Tuird Respondent.

STATE OF NEW YORK):

ROBERT RIVERS, an attorney duly admitted to the process of law in the State of New York, affirms the truth of the roll ing facts under penalty of perjury.

That your affirmant is the attorney of record for above-named petitioners and submits this affirmation in  $2p_{\rm per}$  to the respondents' instant motion for summary judgment.

That it is contended by the respondents that there is genuine issue to be tried as to the material facts relating the proposed Spinney Hill site. A careful perusal of the petitions' complaint would reveal that respondents' contention is

consideration. In this Court, it is the law that an affidavit cannot be used to controvert a well-pleaded ellegation of the complaint in order to obtain a summary judgment. FREDERICK HAP & CO. v. PECORDGPAPH CORP., 3 CIR, 169 F. 2d 58; FEY OLDS FTAL CO. v. METALS DISINTEGRATING CO., 3 CIR, 176 F. 2d 19. CO. UNITED STATES v. VICILANTE D.C., 10 F.R.D. 343. The control of the case of the ca

"....no matter how likely it may see that the pleader will be unable to prove his order, so is estitled, upon answering a claim, an opportunity to the to prove it...."

F. SUPP. 537; CINSBURG V. STERM, 120 r. supp. 737. 1511 \* serious have been subject to some criticism and an incremental address of fivel Processing.

Suggested to meet the reling of the case, ve. Lee still sees the law of this is int.

That under all the interities, is not for summanes of ment should not be drawfed unless the output of learning coverage inconarty is intitled to a judement beyond all double and not ment issue remains. In this instant case, it is one succession on the hasis of well-established refincially that are issued on the basis of well-established refincially that are issued on the complaint and denied by the arrower, either we the entery of summary indument. Home called the first had being present, the method and extent of the proof of that issued are not to be note into. Case of the first present is genuine issue of fact, and not on in the not extend that is in the genuine issue of fact, and not on in the not extend that it is is genuine issue of fact, and not on in the part extends that it is issued is to be determined. Case of the PROOF IT.

That a party moving for summary judgment (here the responsents) has the burden of showing that no controverted issue of fact exists. All the cases so hold. In GRIFFITH v. JILLIA" FEW BROADCASTING CO, D.C., 4 F.R.D. 475, 477, it is interested from a movent for summary judgment could now from pleadings, described etc., that in the event that the case should proceed to trial the event that the case should proceed to trial the event would be no completent evidence to support the company of the event that the burden has been met. Besides, if they we make the case should that a planner of the event that the event that the summar function of showing a motion by defendant for summar functions alleged and complaint by presenting issues of fact for trial.

That summary judgment is not the proper processor is vision seet with an index of reasonable to conform the law is the conformal conform

That it was alleged by the petitioners in train or right that respondents failed to county with the well-establish in mich ple of "scattered ousing" in that there failed to requirement of alternate site. The respondents respondent to the said all a cincipal

by naming two (2) sites which they alleged constitute an alternate site; namely, the Cutter Mill Site and Port Mashington Boulevard Projects. It must be pointed out that the Cutter Mill Road site in Great Nack became a subject of complaint initiated by the Lake-ville Civic Association in Great Nack and they intend to proceed in Court if they get unfavorable results from the New York State Department of Environmental Conservation which is currently considering the objections of the said Association. In view of the prospective logal pattle, it could not be asserted with any containty that the Cutter Mill site is an alternate site. Besides, whether the said site constitutes an alternate site is an issue which could be decided on the basis of commercial evidence and not an the basis of afficavior.

That it is reconstructed on fraction is a siled to inablish that no genuine issue of fact of the reliable will be also be a state and, petitioners had submitted conseivent evidence of the petitioners had submitted conseivent evidence of the period to use in support of their allegation contained in the period and.

That in view of the forestoin, facts, it is to submission of your affirmant that there are genuine controversed issues to go to (rial. The question as to shelmen in spenders have complied lith the Enulisy of and the unvil results act are issues that can fairly be determined as the creation and not on the easis of affidavits. Besides, whether the first have about respondents complied with the well-established principle of the scattered housing in selecting the Spinney Mill life and shedger federal respondents complied with the said principle in approving the site are issues that can be determined on the design of evidence and that affidavits are no substitute for trial of evidence.

WHEREFORE; your affirmant respectfully requests that the relief sought by the Federal respondent be denied in all respects.

Dated: Westbury, New York Hay 15, 1974

AFFIRMED UNDER PENALTY

15/

Or PERJURY:

AUGERT RIVERS
Artorney for Petitioners
Office & P.O. Address
207 Post Avenue
Hertbury, New York 11590

completely without foundation and is baseless. It must be deferred that there are denoted issues to be tried and such issues are of great outlife functions that it cannot be tried on the wasts of affideviss. It is ont, the content procedure to not the proper procedure for determining an issue of such importance. A motion for summery todament should not be granted upless the bruta is clear and the moving party is entitled to a prepared beyond all could not necessary fusions for summery judgment never the surgen of showing that no controverted issue of facts exist. VAR pages HILLING Co., INC., v. Seebad Co., 137 is sufficiently for any of the facts exist. The substitute of complaint is independent to controver the facts of the page of the summer of complaint in order to a soft move that the facts are also as a first page.

That elicibeers' conclaint As ase, from a violation of the Civil Rights nots of 1964 and 1953. The metitionorr have demonstrates to the small found state a fifty to sustain the respordents breach of the civil data factor (co. all. posts a etc. rell Terrora con the core of the reserve to the transfer of the fit of the cornous recover again and again again the contained in the first the trare is no factual and for the all matter of the conformation that lack of such factual lesse exist a two trends in rought and has continued to the present time and the there it, is to such questions, no controverted issue of fact. Assuming, without further consideration, that the concluint and their answers are to be considered on notions for suppervisuations to the same mander as afficavity, where a small arter nutters to receive

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF: WILLIAM JONES. CLARENCE BRRIS. MARY HOBBS. ROBERT CURRY, MRS. EVELYN BROWN, THOMAS HOLMES, HRS. EPPIE JOHNSON, HILLIAM HARRIS. MRS. ALBERTHA JOHNSON, MRS. ROSE WILLIS. MRS. SHARRA BROWN, WILLIAM DORY, MRS. ELLA HARRIS, GEORGE ROSTRY and GREAT NECK MANOR CIVIC ASSOCIATION, and all other similarly situated.

Petitioners.

CIVIL ACTION No. 730 1104

#### -against-

ROBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., GEORGE C. SOOS, FELIX G. ANDREWS. JOHN F. MCDONALD. ARTHUR G. BINGHAM, WILLIAM H. RYAN, JR., TOWN OF NORTH HENPSTEAD,

first Respondents,

HECTOR H. GAYLE, Executive Director, BERNARD GARTLER, Chairman, JOSEPH CECI. DR. CURTIS KENDRICK, LOCAL URBAN RENEWAL PLANNERS.

Second Respondents.

JOHN MAYLOTT and GERALD V. CRUISE. DEPT. OF HOUSING AND URBAN DEVELOPMENT.

Third Respondents.

PETITIOHERS' MEMORANDUM OF LAW IN OPPOSITION TO FIRST AND SECOND RESPONDENTS' MOTION TO DISHISS PETITIONERS' COMPLAINT

Westbury, New York 11590

ROBERT RIVERS Attorney for Petitioners Office & P.O. Address 287 Post Avenue

#### POINT ONE

## PETITIONERS' ACTION IS GOVERNED BY EQUITABLE DOCTRINE OF LACHES

It is contended by the Respondents that this action was not timely commenced and therefore should be dismissed. It has been pointed out before that petitioners seek not damages, but rather declamatory and injunctive relief.

Consequently, this action should be considered solely equitable and hence governed by the equitable doctrine of laches. Thus it was pointed out by Justice Frankfurter in HOLMBERG v. ARBRECHT, 327 U.S. 396:

"Traditionally and for good reasons, statutes of limitation are not controlling measures of equitable relief. Such statutes have been drawn upon by equity solely for the light they may shed in determining that which is decisive for the chancellors intervention, namely whether the plaintiff has inexcusably slept on his rights so as to make a decree against defendant unfair."

Essentially, it must be observed that the question as to whether laches bar an action in a given case depends upon the circumstances of that case and is a question primarily addressed to the discretion of the trial court.

GARDNER v. PANAMA R. CO., 342 U.S. 29, 30. Besides.

where there has been no inexcusable delay in seeking a remedy and where no prejudice to the respondents has ensued from mere passage of time, there should be no part to the relief. The equitable doctrine of laches is pasically designed to ensure fairness to defendants. Such doctrine promotes Justice by preventing surmises through the revival of claims that have been allowed to slumbar until evidence has been lost, memories have faded and witnesses disappeared.

In the instant, petitioners had not inexcusably slept on their rights and there had not been any prejudice to the respondents. It is therefore ludicrous for the respondents to assert that petitioners did not commence this action timely. It is, however, the submission of the petitioners that this action is based on Federally created right for which the sole remedy is equity and that statute of limitations barring action at law is inapplicable.

### POINT TWO

## THE APPLICABLE STATUTE OF LIMITATION UNDER NEW YORK LAW IS THREE YEARS

The respondents argue that the applicable statute of limitation under New York Law has run. Now, assuming that the equitable doctrine of laches does not apply in this instant case, it however becomes obvious that there are two separate issues which must be resolved in this case.

First, it must be determined what statute of limitation applies to the facts alleged in the petition. Second, it must be determined which dates are the key ones for the statute of limitations; that is when did the statute begin to run.

Congress when it enacted the Civil Rights Act did not provide for a national statute of limitations. consequently, it is necessary to examine the various statutes of limitations in the appropriate state, in this instance, New York State, and apply the statute which limits actions most similar to the one in the instant petition.

An examination of the various statutes of limitations quickly narrows the possible statutes to two, namely:

New York Civil Practice Act Section 48 (2) which provides:

"The following action must be commenced within six years after the cause of action has accrued....2. An action to recover upon a liability created by statute except penalty or forfeiture."

The period for action:

"to recover upon a liability created by a statute was shortened to three years"

effective September 1, 1963 by C.P.L.R. Section 214 (2).

C.P.L.R. Section 217 provides:

"Unless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding..."

Thus, in determining the applicable statute of limitation governing the Civil Rights Act, it was stated in the leading case of <u>SWAN v. BOARD OF EDUCATION 319</u>

F2d 60 as follows:

"We need not consider whether the four months period provided in section 1286 with respect to article 78 proceeding is the kind of state statute of limitations to which federal courts will look in the absence of a federal statute or whether, if it were, it should be rejected, on the ground that it would substantially impair the federal

right sought to be enforced.
CALDWELL v. ALABAMA DRY DOCK &
SHIPBUILDING CO., 161 F2d 83
(S cir 1947); DAVIS v. WESCHESLER
263 U.S. 22, 44 S. CT. 13, 68 L.
Ed. 143 (1923); HILLS & CO. v.
HOOVER, 220 U.S. 329, 336, 31 S. CT
402, 55 L. Ed. 485. For section
section 48 (2) of the New York Civil
Practice Act prescribes a six year
statute of limitation for actions
'to recover upon liability created by
statute' and the plaintiff cause of
action derives from a statute, the
Civil Rights Act."

The six year period for the Civil Rights Act was reiterated in ROSENBERG v. MARTIN 478 F2d 520 1973:

"...We have held. SWAN v. BOARD OF HIGHER EDUCATION, SUPRA, 319 F2d at 59. that the applicable period for civil rights claims was the six years allowed under former New York Civil Practice Act Section 48 (2) for actions 'to recover upon liability created by statute'".

And again in BOMAR v. KEYES 152 F2d 140 it was stated that

"the applicable period is six years"

It has therefore been concluded by decided cases that the six year period under the former New York Civil Practice Act as modified by C.P.L.R. 214 (2) to three years applies in this case.

In view, therefore, of the decided cases reviewing the applicable statute of limitation governing Civil Rights Acts, it is untenable for the respondents to contend that the applicable statute of limitations under New York Law is four months. Even if the statute began to run at the date stated by the respondent, it still can not be concluded that the petitioners are barred by the statute of limitations. This action was commenced timely by the petitioners since they were within the three year period provided by the New York Civil Practice Act.

### CONCLUSION

It is respectfully submitted that the petitioners commenced their action within the time provided by the statute and therefore the relief requested by the first and second respondents should be denied in all respects.

Respectfully Submitted by:

ROBERT RIVERS
Attorney for Petitioners
Office & P.O. Address
287 Post Avenue
Westbury, New York 11590
(516) 333-3556

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

In the Matter of the Application of WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS, ROBERT CURRY, MRS. EVELYN BROWN, THOMAS HOLMES, MRS. EPPIE JOHNSON, WILLIAM HARRIS, MRS. ALBERTHA JOHNSON, MRS. ROSE WILLIS, MRS. SHARA BROWN, WILLIAM DOBY, MRS. ELLA HARRIS, GEORGE ROSTKY and GREAT NECK MANOR CIVIC ASSOCIATION, and all others similarly situated,

73 C 1104

Petitioners,

- against -

MICHAEL E. TULLY, JR. and TOWN OF NORTH HEMPSTEAD,

First Respondent,

HECTOR H. GAYLE, Executive Director, BERNARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK, Local Urban Renewal Planners,

Second Respondent,

JAMES E. LYNN, Secretary, Department of Housing and Urban Development,

Third Respondent.

#### Appearances:

ROBERT RIVERS, Esq.
Attorney for Petitioners
287 Post Avenue
Westbury, New York



### Appearances (continued):

RICHARD J. OSTERNDORF, Esq. Attorney for First Respondent Town Hall Manhasset, New York 11030

RALPH A. NAPPI, Esq.
Attorney for Second Respondent
33 Main Street
Port Washington, New York 11050

HONORABLE DAVID G. TRAGER United States Attorney Attorney for Third Respondent

By: HAROLD FRIEDMAN, Esq.
Assistant United States Attorney

PARTELS, D. J.

In the last few years federal courts have been faced with mounting problems in determining whether the United States Department of Housing and Urban Development ("HUD") has violated into Civil Rights Act of 1964 and 1968 in site selections for locations for federally assisted housing projects in areas of racial concentration. Here we are concerned with the racial and socioeconomic effects of the construction of a proposed one hundred unit low- and moderate-income housing project ("the Project") on a site selected by HUD in "Spinney Hill", a predominantly black area within the Town of North Hempstead, Nassau County, State of New York ("the Town"). Petitioners,

Neck Manor Civic Association, an association of property owners in Spinney Hill, have instituted this class action against the Town, the Local Urban Renewal Agency, established by the Town as its Local Public Agency under the Housing Act of 1949, 42 U.S.C. § 1451(b), ("The LPA"), and HUD to enjoin the construction of the Project, contending that the construction of the Project will perpetuate racial concentration in the Spinney Hill area in violation of § 601 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and § 808 of the Civil Rights Act of 1968, 42 U.S.C. § 3608. Jurisdiction is predicated upon 28 U.S.C. §§ 1331, 1343.

### Introduction

In order to obtain funds from HUD, the Town Board must make an acceptable application. In this case the Town Board determined that the Spinney Hill area is a "substandard and unsanitary" area appropriate for urban renewal, and has designed the Project to replace existing structures, 80% of which the Town Board has determined to be "blighted," with commercial, residential and recreational buildings. HUD committed itself to fund the Spinney Hill Project under its Neighborhood Development Program ("NDP"), which authorizes funding of such projects in annual increments. As finally

approved by HUD, the Project involves Federal grants and loans for site acquisition only, with support for actual construction to be provided under New York State's 'Mitchell-Lams" Program, N.Y. Private Housing Finance Law § 10 (McKinney's, supp. 1973). Petitioners allege that the Town and the LPA have deliberately selected the predominantly black Spinney Hill area to locate the Project, which is also expected to be predominantly black, and have made no attempt to acquire non-segregated sites within the Town for the location of additional low- and moderate-income housing projects. It becomes necessary, therefore, to examine the factors, procedures and information utilized by HUD in approving the Spinney Hill site for assistance under the Neighborhood Development Program.

According to the Neighborhood Development Program
Handbook, an application for assistance will not pass beyond
the preliminary screening stage unless there is an affirmative
finding for each of the following six prerequisites: (1)
Workable Program; (2) Local General Plan (official documents
concerning land use, zoning ordinance and map, subdivision
regulations to serve as a comprehensive guide for the

physical development of the locality as a whole); (3) Civil rights (evidence of compliance with Title VI of the 1964 Civil Rights Act and Executive Order 11246); (4) Relocation Requirements (compliance with Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970); (5) A-95 Coordination (procedure involving review of applications under the Office of Management and Budget Circular A-95); and (6) Housing Component (absence of any known barrier which would preclude all assisted housing sites in the project area from receiving at least an adequate rating on the Housing Production and Mortgage credit project selection system).

## The Town's Workable Program

Under the provisions of the Housing Act of 1949, 42 U.S.C. § 1451, before any Federal urban renewal assistance may be made available in a community, including that under the Neighborhood Development Program, that community must submit to HUD an acceptable "workable program for community improvement" including "an official plan of action . . . for effectively dealing with the problem of urban slums and blight within the community and for the establishment and preservation of a well-planned community with well-organized

environment for adequate family life." HUD's initial acceptance or certification of a community's workable program is valid for only two years and recertification is predicated on a review of the progress submitted by the community to HUD biannually thereafter. Under § 1451 HUD is required to determine that (1) the workable program is of sufficient scope and content to furnish a basis for evaluation of the need for the urban renewal project, and (2) the project is in accordance with the program. Under the Civil Rights Act of 1968, 42 U.S.C. § 3608(d)(5), HUD is also required to administer the programs relating to housing and urban development "in a manner affirmatively to further the policies" of the Act against discrimination.

As required by its workable program procedure, HUD exercised supervision and control over the Town's efforts to provide non-segregated low- and moderate-income housing to avoid the perpetuation of racial concentration. For example, in March, 1971, before the Spinney Hill NDP was proposed, HUD withheld recertification of the Town's workable program pending the submission of evidence of its efforts to provide relocation housing outside racially concentrated areas for those

displaced by governmental redevelopment programs, a concept of scatter-site housing. Only after the Town Board unanimously passed a resolution expressing its intent "to utilize all resources available to encourage construction of low- and moderate-income housing outside areas of racial concentration for residents of all races and economic mixes . was recertification granted by HUD. Pursuant to this commitment the Town Board proposed three sites to HUD, two of which, the Cutter Mill and Port Washington Boulevard sites, were approved in March, 1972. The third proposed project, for twenty-six low income units in the Spinney Hill area, was rejected by HUD's Equal Opportunity Division because it was in an area of racial segregation. The Cutter Mill site is located in a predominantly white neighborhood and will accommodate approximately seventy low-income sites, while the Port Washington Boulevard site will accommodate approximately twenty-eight low-income units in an area adjacent to an existing predominantly black housing project. The two projects were approved as a package by HUD with the less costly Port Washington Boulevard site making the more costly Cutter Mill site feasible. In January, 1973, a challenge to the Cutter Mill project was raised by a community group based primarily

on its environmental impact which is presently under study both by HUD and by the New York State Department of Environmental Conservation.

#### The Spinney Hill Application

The current Spinney Hill Project, approved for its first year of funding under the Neighborhood Development Program in September, 1972, called for acquisition of nine acres of land and two hundred housing units to be funded under the federally subsidized housing progrem, 12 U.S.C. § 1715z-1. for which HUD allowed the Town a \$1,400,000 losn and a \$1,300,000 capital grant for first year site acquisition. Because of a moratorium on funding of federally subsidized housing in 1973, the Project was modified in the first year to obtain other sources for financing. Accordingly, the second year NDP application was adjusted to accommodate only one hundred units of housing to be financed under the 'Mitchell-Lame" program, NYPHFL \$ 10 (McKinney's supp. 1973). The Town's plan provided that the land originally acquired in the first year, together with an additional fourteen parcels funded by HUD, would be sold to a developer in a package upon the condition that the profits on the commercial development would be employed to reduce rents on the one hundred units

of housing. Further rent supplements were to be added from a fund already contributed by various local organizations, including the Inter-Faith Council of Manhasset. Pursuant to this application, HUD approved a \$1,175,000 grant and a \$1,612,643 loan to the Town for acquisition of the fourteen percels.

Before the Spinney Hill NDP was approved, and pursuant to the requirements of the Housing Act of 1949, 42 U.S.C. § 1455(d), public hearings were held, first by the Town's Planning Board in May, 1972, and then by the Town Board in June, 1972. Public notice was given in advance of the Town Board hearings through posting of notices in conspicuous places about the Town and by publication in The Great Neck Record on June 1st and June 8th, 1972. Various speakers at the hearings recounted the conditions of overcrowding, crime, and drug use which were present in the redevelopment area and expressed their views in favor of the Project, explaining how the Project would alleviate these conditions. At these hearings the attorney for the petitioners and petitioner Jones on behalf of the Great Neck Menor Civic Association opposed the Project. A number of other area residents and

representatives of local civic and civil rights organizations including the local chapter of the NAACP and the Manhasset Inter-Faith Council, spoke in favor of the Project. A petition signed by 700 area residents supporting the Project was also presented to the meeting. After hearing the voice of the area residents, the Town Board unanimously approved the Project on June 13, 1972 in compliance with 42 U.S.C. § 1469(c)(1).

#### HUD's Evaluation

The Town's application for funding under the Neighborhood Development Program was evaluated under the procedures set out in HUD's NDP Project Selection System, 24 CFR §§ 511 et seq., and was approved for its first year of funding in September, 1972. Under this system, applicants for assistance under the Neighborhood Development Program, such as the Town of North Hempstead, are required to submit "acceptable assurances of compliance with the Civil Rights Act of 1964, . . . and HUD title VI regulations 24 CFR Part I, . . ." as a prerequisite to further consideration of their application.

24 CFR § 511.4(c). Once this and other prerequisites have been met, HUD is obligated to evaluate pursuant to § 511.20

the degree to which the locality in which the project is to be located "has a realistic plan to expand the supply of standard low- and moderate-income housing in a nondiscriminatory way outside areas of concentration of economically disadvantaged or minority citizens."

The affidavits of HUD officials clearly establish that the Project was evaluated under this selection system pursuant to which HUD determined that (1) the prerequisite of "acceptance assurance of compliance with the Civil Rights Act of 1964, . . . " 24 CFR \$ 511.4(c), was met by the expressed commitment of the Town Board to equal opportunity in housing as evidenced by its resolution of June 15, 1971 and its proposal of the Cutter Mill and Port Washington Boulevard sites; (2) the Town deserved an "adequate" rating upon the question of whether there had been a significant expansion of the supply of standard housing for low- and moderate-income families in a nondiscriminatory way, and a "good" rating on the question of whether it had a realistic plan for the expension of such housing outside areas of racial concentration, 24 CFR § 511.20; (3) one of the objectives of the Spinney Hill NDP was to promote equal housing opportunities and to encourage a reduction in the concentration of minority group

persons within the Spinney Hill community; (4) the Project received the support of numerous community groups and many area residents who expressed their support at the two public meetings held by the Town in 1972 and by the petition supporting the Project signed by 700 area residents; (5) a pressing need existed for such housing in the Town as evidenced by an extremely low vacancy rate of 2.2%; and (6) the Project was part of a Town-wide effort to expand low- and moderate-income housing on an integrated basis.

In this evaluation HUD utilized the reports of the Equal Opportunity Division of its New York Office made in connection with both the first and second year Spinney Hill NDP applications which included data on the racial composition of the Town and the Spinney Hill area. The report on the second year application identified specific areas proposed by the Town for relocation outside areas of racial concentration of the 54 persons to be displaced from their homes by construction of the Project. It also found that the Project would contribute to dispersement of low income and minority family concentration in the area by its marketing program which was designed to schieve a balance of 80% middle income to 20% low income occupancy.

# Complaint and Investigation

After approval of the first year NDP application in September, 1972, petitioners had 90 days to file a complaint under HUD's administrative complaint procedure, 24 CPR § 1.7. They did not do so. Instead, petitioners waited until July, 1973, to file their complaint in this action, which came before this Court for the first time in August, 1973, at which time they sought a preliminary injunction to halt construction of the Project. At the Court's suggestion, HUD's attorney agreed to waive the 90-day period within which such a complaint could be filed, and the matter was adjourned until a formal complaint could be made to HUD and a further investigative report filed by it. Such a complaint was filed with HUD by petitioners on September 6, 1973, and HUD accordingly conducted a second thorough review of the Project. HUD's regional Equal Opportunity Office, in investigating the complaint, conducted meetings with the complainants, local redevelopment officials and HUD program personnel, and reviewed HUD files. The investigative report filed on November 5, 1973, concluded that there was no merit in the complaint, noting that both HUD and the Town were "aware of, considered, and acted upon Equal Opportunity concerns" with respect to

the Spinney Hill NDP and the Town's workable program for community improvement in general. The report found that the Town had taken affirmative steps to implement a policy of equal housing opportunity in spite of the fact that the construction of the Cutter Mill site was delayed pending the study of its environmental effects. This report was further reviewed and concurred in by HUD's Assistant Ragional Administrator of Equal Opportunity, on the basis of the insistence of HUD's New York office that the Town Board officially commit the Town to a policy of equal housing opportunity and the Town's affirmative steps to implement that policy.

# Standard of Review

The Civil Rights Act of 1964, which prohibits racial discrimination under programs receiving Federal financial assistance, 42 U.S.C. § 2000d, provides that agency action 6/
taken with respect thereto "shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds . . .,"
42 U.S.C. § 2000d-2. Since HUD's actions in approving the Project under its Project Selection System, 24 CFR §§ 511
st seq., and in rejecting the complaint under 24 CFR § 1.7, constitute department action relative to the anti-discrimination

provisions of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, the standard for judicial review, as in similar actions taken by HUD, is provided by the Administrative Procedure Act, 5 U.S.C. §§ 702, 706.

The review is not a <u>de novo</u> or a substantial evidence review, but a thorough, probing in-depth review.

Camp v. Pitts, 411 U.S. 438, 93 S.Ct. 1241 (1973). The standard of review for informal agency action such as in the present case is enunciated in <u>Citizens to Preserve Overton Park v. Volpe</u>, 401 U.S. 402, 91 S.Ct. 814 (1973), where the Suprema Court, speaking through Mr. Justice Marshall, applied the arbitrary and capricious criteria of Section 706(2)(A) in reviewing the administrative action of the Secretary of the Department of Transportation, stating that:

"To make this finding the court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment . . . [citation of cases] . . . Although this inquiry into the facts is to be searching and careful, the ultimate standard for review is a narrow one. The court is not empowered to substitute its judgment for that of the agency."

401 U.S. at 416.

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The Second Circuit in Schicke v. Rommey, 474 F.2d 309 (1973), following the mandate of Overton Park, applied the same test in reviewing the action of the Secretary of HUD relative to the conversion-substitution of certain tracts of public lands. There Judge Lumbert observed, at p. 314-15:

Mercaria

"... Since neither the substantial evidence test nor de novo review is authorized, a reviewing court is limited to setting saids informal agency action that does not comply with constitutional, statutory, or procedural requirements or is 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.' "

It is incumbent upon the reviewing court to be assured that the Secretary of HUD, in administering the programs and activities relating to housing and urban development, did so "in a manner affirmatively to further the policies" of the Civil Rights Act, which means that HUD in choosing site locations for funding must avoid racial discrimination. See 42 U.S.C. § 3608(d)(5). A leading case in the factual context of the present one is Shannon v. United States Department of Housing and Urban Dev., 436 F. 2d 809 (3d Cir. 1970). There the court referred to the interrelationship of the Housing Act

of 1949 and the 1964 Civil Rights Act, and reversed the lower court in dismissing a complaint challenging HUD's action in approving a change from an urban renewal plan contemplating owner occupancy to a plan contemplating rental dwellings with rent supplement assistance, upon the ground that it was not predicated upon a consideration of all relevant factors including the racial and socioeconomic factors. The case was remended for an injunction until HUD had determined whether the site location or the renewal project would further the ends of the Federal housing policy.

Although the Shannon court did not rule upon the merits, it held that the Civil Rights Act could be violated without intentional discrimination. Cf. Hicks v. Wesver, 302 F.Supp. 619, 623 (E.D. La. 1969); Gautreaux v. Chicago Housing Auth., 296 F.Supp. 907 (N.D. III. 1969). The court held that HUD's choice of a site location which resulted in an undue concentration of persons of a given race or socioeconomic group in a given neighborhood could cause racial discrimination without any intent to discriminate, and suggested that absence of discrimination might not be sufficient, since positive integration was the objective. However, it conceded that (p. 822):

"There will be instances where a pressing case may be made for the rebuilding of a racial ghetto."

and concluded that (p. 821):

"So long as it [HUD] adopts some adequate institutional means for marshaling the appropriate legislative facts the rights of affected residents will be adequately protected, we think, by the opportunity to obtain judicial review pursuant to the Administrative Procedure Act after the agency decision."

This standard was subsequently applied in South East Chicago Commission v. Department of HUD, 343 F.Supp. 62 (N.D. III., 1972), aff'd., 488 F.2d 1119 (7th Cir. 1973).

The necessity to rehabilitate a blighted neighborhood and to provide additional low-income housing at a particular site may clearly outweigh the disadvantages of racial concentration. If HUD adopts the proper procedures and considers the relevant factors to effectuate the congressional policy, there is no bar to HUD's approval of a housing project in a predominantly black neighborhood, as it did in this case. See Croskey Street Concerned Citizens v. Rommey, 335 F.Supp. 1251 (E.D. Pa.), aff'd., 459 F.2d 109 (3d Cir. 1971). Thus low-income housing and racial concentration at a particular site are not mutually exclusive if justified by the relevant

housing factors.

#### Conclusion

Site selection is not simple and requires the consideration and balancing of many complax factors. See Ledbetter, Public Housing - A Social Experiment Seeks Acceptance, 32 Law & Contemp. Prob. 490, 504 (1967); Comment, 85 Harv. L. Rev. 870, 878 (1972). A court should not jettison HUD's determination without a finding of arbitrary and capricious action not in accordance with law, which it cannot find in this case. In applying the Administrative Procedure Law framework, the court had before it and examined in depth the administrative record. It directed its attention to HUD's formalized fact-finding procedures, its report, the affidavits of the HUD officials involved in the approval of the project and the investigative report which in fact was a second look at the project made pursuant to the petitioners' administrative complaint. The court also noted the failure of the petitioners to supply affidavits presenting a factual issue as contrasted to their opinions. scrutinizing the allegations of racial discrimination, Southern Christian Leadership Conference v. Connolly, 331 F. Supp. 940 (E.D. Mich. 1971), the court concludes that (1) there

was no intentional discrimination; (2) HUD's discretion was properly exercised within the framework of the national policy against discrimination in federally funded housing; (3) the record establishes that HUD through its Project Selection System investigated, weighed and balanced all the relevant factors; and (4) its judgment was an informed one without clear error and fully satisfied the requirements of Section 706 of the Administrative Procedure Act.

Accordingly, HUD's motion for summary judgment is granted and the complaint against it is dismissed. The complaint against the Town and the LPA being also predicated on a violation of the Civil Rights Act of 1964, it follows that the approva. "HUD's action includes a determination of no discrimination on the part of the Town and the LPA, and likewise mandates a dismissal against both of these respondents.

SO ORDERFD.

Dated: Brooklyn, New York
June 26 1974.

United States District Judge

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#### Footnotes

- Although challenged, both individual patitioners, as residents of the neighborhood, and the Great Neck Manor Civic Association, consisting of such residents, have standing as "aggrieved" persons under the Administrative Procedure Act, 5 U.S.C. § 702. Association of Data Processing Service Org., Inc. v. Camp, 397 U.S. 150, 90 S.Ct. 827 (1970); Shannon v. United States Dept. of Housing & Urban Dev., 436 F.2d 809 (3d Cir., 1970).
- 2/ Resolution #369-1971, June 15, 1971.
- 3/ Some members of the Great Neck Manor Civic Association took action to disassociate themselves from this lawsuit and expressed their support for the Project in letters to the LPA after being named as individual petitioners. (Letters of Ella J. Harris, Alberta Johnson, William Harris, July 26, 1973; Letter of Thomas T. Holmes, August 2, 1973.)
- Consisting of private rental market and sales; 66 units of state-aided family public housing; 89 units of federally-funded housing and 110 units of Mitchell-Lama housing. In addition, contrary to petitioners' allegation that the Project would burden the Manhasset School District, HUD's Equal Opportunity Division found that the Project would be located in the Great Neck School District which has a minority enrollment of 4% rather than the Manhasset School District which has an 11% minority enrollment, thus contributing to the desegregation of the North Hampstead School System. (Report of Grace Malone, Equal Opportunity Division, June 11, 1973.)

## Footnotes (continued)

- 5/ The Town and the LPA charged petitioners with laches on the theory that by analogy to the 4-month statute of limitations applicable under New York law to actions against administrative bodies and officers. NYCPLR § 217, petitioners have slept on their rights. See Holmberg v. Armbrecht, 327 U.S. 392, 66 S.Ct. 582 (1946). On the other hand, petitioners argued that New York's 3-year limitation applicable to actions brought under a statute, NYCPLR \$ 214. should be applied by analogy as in other Civil Rights actions, Swan v. Bd. of Higher Education, 319 F.2d 56, (2d Cir., 1963); Ortiz v. La Vallee, 442 F.2d 912 (2d Cir., 1972); Romer v. Leary, 425 F.2d 186 (2d Cir., 1970). Considering the emergency nature of the funding of housing projects, the court believes that the interest of all concerned would be best served in an action brought under the Civil Rights Act of 1964. 42 U.S.C. 2000d, by the application of the shorter. four-month statute. (See Abrams v. Carrier Corporation, 434 F.2d 1234, 1251-52 (2d Cir., 1970)), rather than the three-year limitation as applied in the above action sinstituted under the Civil Rights Act of 1871. 42 U.S.C. § 1983. Instead of berring petitioners upon this ground, the court felt that petitioners should have a second opportunity to present their objections to the Project, and induced HUD to waive this defense.
- In order to effectuate the provisions of 42 U.S.C. § 2000d and in accordance with § 2000d-1, HUD promulgated regulations designed to prevent discrimination in federally financed housing programs at 24 C.F.R. § 1.1 et seq. Following the mendate of Shannon, supra, HUD developed further procedures to prevent discrimination in its NDP Project Selection System, 24 C.F.R. § 511 et seq.; 511.4(c); 511.20.
- Petitioners also failed to reply to the statement of facts not in issue filed by Respondents pursuant to Rule 9(g), General Rules of the Southern and Eastern District Courts of New York.

#### UNITED STATES COURT OF APPEAL

SECOND CIRCUIT: NEW YORK

IN THE MATTER OF THE APPLICATION OF:
"ILLIAM JONES. CLARENCE BRRIS, MARY HOBBS,
ROBERT CURRY, MRS. EVELYN BROWN, THOMAS
HOLMES, MRS EPPIE JOHNSON, WILLIAM HARRIS,
IRS. ALBERTHA JOHNSON, MRS. ROSE WILLIS,
MRS. SHARA BROWN, WILLIAM DORY, MRS. ELLA
HARRIS, GEORGE ROSTRY and GREAT NECK MANOR
CIVIC ASSOCIATION, and all other smilarly
situated

PETITION TOP PERMISSION NO APPEAL

Cy. Act. No. .

73 C 1104

itioners.

-against-

ROBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., GEORGE C. SOOS, FELIX G. ANDREWS, JOHN F. MCDONALD, ARTHUR G. BINGHAM, ILLIAM H. RYAN, JR., TOWN OF HORTH HEMPSTEAD,

First Respondents,

HECTOR H GAYLE, Executive Director, JERNARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK, LOCAL URBAN RENEWAL PLANNERS

Second Respondents.

JOHN MAYLOTT and GERALD V. CRUISE, DEPT. OF HOUSING AND URBAN DEVELOPMENT.

Third Respondents

## PETITION FOR PERMISSION TO APPEAL

To the Judges of the United States Court of Appeals Second Circuit: New York

PETITIONERS hereby petitions this Court pursuant to 28 U.S.C.A. Section 1292(b) and Rule 5 of the Pederal Rules of Appellate Procedure for permiss: n to appeal from the Order of HOW. JUSTICE J. R. BARTELS, United States District Court, Eastern District of New York, entered in the Office of the Clerk on the 26th day of June. 1974, a copy of which Order, together with the findings of fact, conclusions of law and opinion related thereto, are annexed to this petition.

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#### THE PACTS

1. The facts necessary for an understanding a see controlling question of law determined by the District Court brie. are as follows: Petitioners, several individuals who were a in SPINNEY WILL and the GREAT MECK MANOR CIVIC ADSOCIATION instituted this class action against the Town of North Lempstons. in . 190-1 CREAD PEND AL AGENCY and DEPARCMENT OF HOUSTYG AND DESCRIPTION OF to enjoin the construction of a proposal one hundred whit low to welcrate income housing project on a circ selecte and a coments in "PINEY FILL, a predominantly plack area in the Town of North Compatend Bassau County, State of Lev York. It as the contention of the Petitioners that the construction of the project of 11 perpetuate racial augentration in the Chill Inc. area in violation of Section 601 of the Civil Righty Art of 1:64. 42 U.S.C. Section 2000d, and Section 80% of the Civil Wilhits St. of 1968, U. .C. Section 3608 Petitioners points is nut-what they are not basically against the construction of public agusin. but they cannot remain adament when the Respondents are an initiathe need for nutlic bousing to colonize black people. It have further be pointed out that all three public housing in the Your d Borth Berostuad are situated in a predominantly black had brothood and, therefore, to construct the fourth public housing in the Town in a predominantly black naighborhood in obviously an attendit by the Respondents to frustrate the contents of the Civil Withts Act and to perpatuate racial secredation.

#### THE QUESTION OF LAW

- 1. The question of law which Petitioners berein request this Court to decide is
  - petuate racial segregation contrary to retion 60 of the Civil Pights Act of 1964, 42 0.00 Constitute 2000d and Section 808 of the Civil Pights Act of 1968 42 U.C.C. Section 3600 and the lamb Error tection Clause of the Fourteenth Arangement and the United States (constitution)
  - the Spiency Hill area is a blighted or recognition that area can be accorted as a conclusion of sections, there is not a particle of evidence from the spondents to indicate likewise.
  - (c) Whether NUD's investigatory report in which Petitioners were given only half an boar to explain their position can be a basis upon which NUD could reach its ultimate conclusion of facts as to the merits of the Petitioners' complaint.
  - (d) Have Petitioners been accorded due process based upon the limited review by the Court.

#### DIFFERENCE OF OPINION

- A substantial basis exists for a difference of opinion on these questions for the following reasons.
  - (a) The Civil Rights Act, especially Section 601 of the 1964 Act forbids the funding of public

lated to perpetuate racial segregation. In this regard, whether the proposed SPINNEY BIL' PROJECT in a predominantly black neighborhood with its 90% black occupancy contravenes the Civil Rights Act and the Petitioners' constitutional right under the Fourteenth Amendment is a question that can be determined only through DE ECVO Hearing and not on a basis of affidavits or resert compiled without an exhaustive investigation of the Petitioners' complaint.

- (b) Since there was no evidence to establish that SPINNEY HILL neighborhood is a blighted area it was erroneous for the trial Justice to accept their allegation as a conclusion of fact. Consultantly, it is the submission of this erfort that there is no advantage which may clearly outweight the disadvantage of racial concentration.
- (4) An immediate appeal may materially advance the termination of this latigation.
- (5) WHERBFORD: Petitioners respectfully request this Court to grant an Order permitting them to appeal from the Order of HON. JUSTICE J. R. DARTELS dismissing Petitioners' complaint.

  Dated: Mestbury, New York July 2, 1974

TO RICHARD J. OSTERNIDORF. Atty for 1st Respondent Town Hall, Manhasset, MY

> RALPH A. HAPPI Atty for 2nd Respondent 33 Main Street Port Washington, NY 11059

HOW. DAVID G. TRAGER United States Attorney Atty for 3rd Respondent 225 Cadman Plaza Brooklyn, New York ROBERT RIVERS
Attorney for Petitioners
P.O. & Office Address
287 Post Avenue
Vestbury. N.Y. 11590

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPLICATION OF WILLIAM JONES, CLARENCE BRRIS, MARY HOBBS, ROBERT CURRY, MRS. EVELYN BROWN, THOMAS HOLMES, MRS. EPPIE JOHNSON, WILLIAM HARRIS, MRS. ALBERTHA JOHNSON, MRS. ROSE WILLIS, MRS. SHARA BROWN, WILLIAM DORY, MRS. ELLA HARRIS, GEORGE ROSTRY and GRAAT NECK MANOR CIVIC ASSOCIATION, and all other similarly situated.

Petitioners,

NOTICE OF APPEAL

-against-

Cv. Act. No. 73 c 1104

ROBERT C. MEADE, JAMES R. WELLS, MICHAEL J. TULLY, JR., GEORGE C. SOOS, FELIX G. ANDREWS, JOHN F. McDONALD, ARTHUR G. BINGHAM, WILLIAM H. RYAN, JR., TOWN OF NORTH HEMPSTEAD,

First Respondents,

HECTOR H. GAYLE, Executive Director, BERNARD GARTLER, Chairman, JOSEPH CECI, DR. CURTIS KENDRICK, LOCAL URBAN RENEWAL PLANNERS,

Second Respondents,

JOHN MAYLOTT and GERALD V. CRUISE, DEPT. OF HOUSING AND URBAN DEVELOPMENT.

Third Respondents

PLEASE TAKE NOTICE that the petitioners herein, hereby appeals to the United States Court of Appeal from the order of the HONORABLE JOHN R. BARTELS, dated and entered the 26th day of June, 1974 in the United States District Court, Eastern District of New York. And from any and all intermediate orders thereof.

Dated: Westbury, New York July 15, 1974.

To: RICHARD J. OSTERNDORF, ATTY for 1st Respondent Town Hall, Manhasset, NY

> RALPH A. NAPPI ATTY for 2nd Respondent 33 Main Street Port Washington, NY 11050

HON. DAVID G. TRAGER United States Attorney 225 Cadman Plaza Brooklyn, New York ROBERT RIVERS Attorney for Petitioners 287 Post Avenue Westbury, NY 11590

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Second Circuit
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# CLERK'S CERTIFICATE

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## STATE OF NEW YORK COUNTY OF NASSAU

ALLEN CORBIN, being duly sworn deposes and says:

That deponent is over the age of 18 years, is not a party to the action and resides at Woodside Street, Freeport, New York.

at Plandome Road, Town Hall, Manhasset, NY he served RICHARD J. OSTERNDORF, ESQ. the attorney for the First Respondent; at 33 Main Street, Port Washington, NY, he served RALPH A. NAPPI, ESQ. the attorney for the Second Respondent; and he served DAVID G. TRAGER, ESQ. United States Attorney for Eastern District of New York at 225 Cadman Plaza, Brooklyn, NY, thereof. Deponent knew the person served as aforesaid to be the person mentioned and described in said papers as the attorneys therein.

Sworn to before me this 29th day of November, 197

Dogwood.

NOTARY PUBLIC, State of New No. 30-3295477

Qualified in Nassau County Commission Expires March 30, 19.25

ALLEN CORBIN